DECISIONS

OF THE

RAILROAD COMMISSION

OF THE

STATE OF CALIFORNIA

VOLUME XXXI

DECEMBER 23, 1927, TO JUNE 22, 1928

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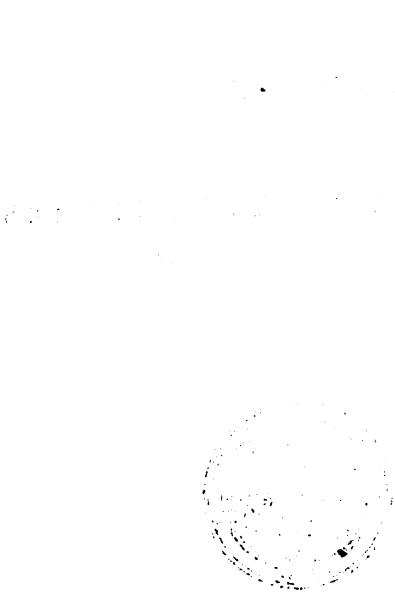

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CALIFORNIA RAILROAD COMMISSION DECISIONS.

DECISION No. 19192.

IN THE MATTER OF THE APPLICATION OF THE LAKE COUNTY TELEPHONE ASSOCIATION FOR PERMISSION TO INCREASE ITS RATES FOR TOLL SERVICE.

Application No. 14128.

Decided December 23, 1927.

RATES—TELEPHONE—TOLL SERVICE.—Application of Lake County Telephone Association to establish toll charges dismissed without prejudice.

RATES—TELEPHONE—TOLL SERVICE.—When subscribers of several farmer line telephone associations have had the right to use lines owned and operated by other farmer line associations without charge other than that fixed monthly charge made for their local exchange switching privileges, as the proposal of one association to apply toll charges to all users would affect all other associations and their subscribers who are not parties to the proceeding, the application will be dismissed without prejudice.

RATES—TELEPHONE—TOLL SERVICE.—The construction of special telephone lines maintained for toll service exclusively, where not now existing, is a condition precedent to any effective or equitable application of toll charges.

BY THE COMMISSION.

ORDER OF DISMISSAL.

Lake County Telephone Association, applicant in this proceeding, owns and operates a telephone line connecting its central office in Kelseyville with that of Lakeport and Blue Lakes Telephone Association, in Lake County, California. At present, subscribers of applicant pay a fixed monthly charge which entitles them to the use of the interoffice line referred to above, at no additional charge; nonsubscribers or occasional users of the interoffice lines, however, are required to pay a message charge for each conversation transmitted over that line. Applicant proposes to apply the message or toll charge alike to all users of the line whether subscribers or nonsubscribers.

Evidence taken at a hearing in this proceeding, held before Examiner Rowell, in Lakeport, on December 6, 1927, showed that subscribers of farmer line telephone associations over a large portion of Lake County have had the right to use the lines owned and operated by other farmer line associations without charge other than that fixed monthly charge made for their local exchange switching privileges. Application of rates as proposed by the Lake County Association would affect all such other associations and their subscribers who were not parties to this proceeding. Moreover, to make possible the application of toll rates as proposed to apply to interexchange messages placed by subscribers as

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well as nonsubscribers, it would be necessary that special lines be maintained for toll service exclusively. The construction of such lines where not now existing, is a condition precedent to any effective or equitable application of toll charges. If there are any subscriber's telephones on the toll line such subscribers will either have a so-called free long distance service or each such subscriber's station will be made a toll station, both results being inequitable and impracticable.

There is no doubt that the applicant desires to effect some improvement in the service rendered and believes that a revision in its charges for toll service to be a step in that direction. But it is clear that the public can not be given anything approaching efficient service until all of the connecting telephone utilities in the Lake County district now providing so-called free intercommunity service join in some practical plan for the improvement of such intercommunity service and for the apportionment of the revenues between the various telephone interests. In a joint application by all of the utilities concerned to fix proper toll rates all interested parties could be heard and rates fixed equitable to all.

For a better understanding of the problems involved reference should be made to Decisions Nos. 12630 (23 C. R. C. 903), 12631 (23 C. R. C. 907) and 14871 (26 C. R. C. 391).

It is hereby ordered, that the application be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this twenty-third day of December, 1927.

DECISION No. 19194.

IN THE MATTER OF THE APPLICATION OF THE LOWER LAKE FARMERS TELEPHONE COMPANY FOR PERMISSION TO INCREASE ITS RATES FOR TOLL SERVICE.

Application No. 14163.

Decided December 23, 1927.

RATES—TELEPHONE—TOLL SERVICE.—Application of Lower Lake Farmers Telephone Company to establish toll charges dismissed without prejudice.

BY THE COMMISSION.

ORDER OF DISMISSAL.

Lower Lake Farmers Telephone Association, applicant in this proceeding, asks authority to charge and collect an initial toll rate of fifteen cents from subscribers and nonsubscribers alike for service rendered between Lower Lake and Kelseyville, and between Lower Lake and Middletown. At present this charge is exacted of nonsubscribers only.

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A hearing was held in this proceeding before Examiner Rowell at Lakeport, California, on December 6, 1927.

Testimony taken at the hearing showed that the construction of a new toll line, as contemplated by applicant in the event a favorable decision was rendered, was a vital necessity if satisfactory service was to be rendered to applicant's subscribers and to the public generally. The evidence further brought out the fact, however, that other farmer line organizations in Lake County and their subscribers, not parties to this proceeding, would be affected by the application of rates sought by applicant; and that no working agreement, which would be necessary in rendering good telephone service, existed among the various farmer line associations.

Arrangements should be made for the transaction of interassociation business and request for authority to establish rates applicable to all users of the service may be made jointly by all farmer line telephone organizations affected.

Reference is made to decision made this day in the matter of application of Lake County Telephone Association for increase in rates for toll service, and to Decisions Nos. 12630 (23 C. R. C. 903), 12631 (23 C. R. C. 907) and 14871 (26 C. R. C. 391).

It is hereby ordered, that the application be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this twenty-third day of December, 1927.

DECISION No. 19200.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA TRACTION COMPANY, HERBERT FLEISHHACKER, AND STOCKTON ELECTRIC RAILROAD COMPANY, FOR AN ORDER AUTHORIZING CENTRAL CALIFORNIA TRACTION COMPANY TO SELL ITS STREET RAILROADS IN THE CITY OF STOCKTON, CALIFORNIA, WITH CERTAIN EXCEPTIONS AND RESERVATIONS, TO HERBERT FLEISHHACKER AND THE LATTER TO THEREUPON SELL THE SAME PROPERTY TO STOCKTON ELECTRIC RAILROAD COMPANY.

Application No. 14231.

Decided December 30, 1927.

TRANSFER—STREET RAILWAY.—Central California Traction Company authorized to sell to Herbert Fleishhacker its street railway lines in the city of Stockton, with certain exceptions, and the latter to sell the same property to the Stockton Electric Railway Company, in accordance with certain agreements.

BY THE COMMISSION.

ORDER.

Central California Traction Company, a corporation, Herbert Fleishhacker, and Stockton Electric Railroad Company, a corporation, on November 22, 1927, filed an application for an order of this Commission

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authorizing Central California Traction Company to sell to Herbert Fleishhacker its street railway lines in the city of Stockton, with certain exceptions and reservations and for said Herbert Fleishhacker to sell the same property to Stockton Electric Railroad Company.

The application recites that on November 21, 1914, the Central California Traction Company and Stockton Electric Railroad Company made and entered into a certain agreement whereby the former leased to the latter, subject to the approval of the Commission, certain portions of the former's street railroad lines in the city of Stockton; that said agreement was approved under Application No. 1470, by the Commission in Decision No. 2243, dated March 18, 1915 (6 C. R. C. 395); that ever since the date of said decision the Stockton Electric Railroad Company has operated said portions of said street railroad system, and that under said lease the traction company granted to the Stockton Electric Railroad Company the option to purchase the portions of said street railroad system so leased.

The application further sets forth that on August 5, 1927, the Interstate Commerce Commission rendered its decision in Finance Docket 5008, "Control of Central California Traction Company," authorizing Southern Pacific Company, a corporation, to acquire control of the traction company by purchase of capital stock and bonds upon the condition that Southern Pacific Company shall admit The Atchison, Topeka and Santa Fe Railway Company, a corporation, and The Western Pacific Railroad Company, a corporation, to participate equally with Southern Pacific Company in joint control of the traction company upon payment of proportionate shares of the cost of the securities to be acquired; that thereafter, by contract dated October 31, 1927, Herbert Fleishhacker and Southern Pacific Company agreed that the traction company, all of whose capital stock is owned or controlled by the former, would sell or convey to him all street car lines in the city of Stockton covered by the lease above mentioned, with certain exceptions and reservations as set forth in paragraph 1 of the contract above mentioned, in consideration of the guarantees personally assumed by him under said contract. Under said contract it was also agreed that Herbert Fleishhacker would sell to the Stockton Electric Railroad Company, and Southern Pacific Company would cause the latter to purchase from him all of the street car lines under the lease above referred to, subject to the exceptions and reservations as already noted, for the sum of one hundred thousand dollars ($100,000) par value. first refunding mortgage bonds of the Pacific Electric Railway Company, payment to be adjusted to credit the Stockton Electric Railroad Company with the interest accrued on said bonds as of December 31, 1927, it being understood and agreed that the transaction should be consummated as of that date, subject to the approval of this Commission.

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It is further set forth in the application that by contract dated October 31, 1927, between The Atchison, Topeka and Santa Fe Railway Company, The Western Pacific Railroad Company and Southern Pacific Company, the first two companies signified their intention to participate equally with the last named company in joint control of the traction company in accordance with the agreement dated October 31, 1927, between Herbert Fleishhacker and Southern Pacific Company, hereinbefore referred to; further, that on November 14, 1927, the Southern Pacific Company, the Central California Traction Company, The Western Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company filed with the Interstate Commerce Commission, in its Finance Docket 5008, entitled "Control of Central California Traction Company," their petition for modification of that commission's decision of August 5, 1927, hereinbefore mentioned, in accordance with said contracts dated October 31, 1927, in order that those contracts may be legally consummated.

Applicants state that the Stockton Electric Railroad Company owns and operates the major portion of the street railway lines in the city of Stockton and is therefore able to perform the local service over the lines it proposes to purchase more economically and efficiently than the traction company; that the combined operation affords transfer privileges probably not otherwise available, and that the maintenance and operation of the street railway system in Stockton by two companies would be a useless and unnecessary duplication of service and would result in a heavy operating loss to the traction company.

The property proposed to be sold is described as follows:

All street car lines in the city of Stockton, California, owned by California Traction Company and now leased to the Stockton Electric Railroad Company by lease dated November 21, 1914, with certain exceptions and reservations all as specifically set forth in paragraph 1 of the contract dated October 31, 1927, between Herbert Fleishhacker and Southern Pacific Company, being contained in Exhibit "A" attached to application. The street car lines intended to be covered are as follows:

(1) Vine street, from El Dorado street to Madison street.

(2) Aurora street from Weber avenue to Park street.

(3) Center street from Scotts avenue to Charter Way (formerly known as South street).

The whole interest in the lines described in items (1), (2), and (3) above (all as shown by red colored lines on the map attached to application, marked Exhibit "B" and made a part thereof) is to be transferred to Herbert Fleishhacker and by him to Railroad Company.

(4) Beginning on Weber avenue at the intersection of said Weber avenue and Pilgrim street and running thence westerly on Weber avenue to and beyond Center street to the junction of the exclusively owned and operated track of the traction company located approximately 46 feet north of the south line of Weber avenue and approximately 37 feet west of the west line of Center street, including all portions of the wye located at the intersection of Weber avenue and Center street, and running thence southerly on Center street to the point thereon on or near Scotts avenue where the track of traction company leading to the Atchison, Topeka and Santa Fe station (which track is not included in the sale) diverges therefrom.

(5) Pilgrim street from Weber avenue to Taylor street.

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An undivided one-half interest in the lines described in items (4) and (5) above (all as shown by green colored lines on the map attached to the application, marked Exhibit "B" and made a part thereof) is to be transferred to Herbert Fleishhacker and by him to railroad company.

The city council of the city of Stockton by resolution dated December 15, 1914, approved the agreement covering the lease authorized in Decision No. 2243, dated March 18, 1915.

It appears to the Commission that the present proceeding is not one in which a public hearing is necessary; that the proposed transfer is in the public interest and that this application should be granted; therefore,

It is hereby ordered, that the above entitled application be granted in accordance with the aforementioned agreements attached to the application and subject to the following conditions:

(1) The authority herein granted shall not be urged by applicants or any of them as a measure of the value of the properties to be transferred, or of any other properties, for any purpose except the transfer herein authorized.

(2) Applicant, Stockton Electric Railroad Company, shall within thirty days thereafter notify this Commission in writing of the completion of the property transfer herein authorized.

(3) If said property shall not have been transferred within one year from the date of this order, the authorization herein granted shall lapse and become void.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this thirtieth day of December, 1927.

DECISION No. 19201.

IN THE MATTER OF THE APPLICATION OF THE HOVEY-BANDY CORPORATION, A CORPORATION, AND LOS ANGELES WATER SERVICE COMPANY, A CORPORATION, FOR A CERTIFICATE AUTHORIZING THE SALE AND TRANSFER OF THE PROPERTIES OF THE HOVEY-BANDY CORPORATION TO LOS ANGELES WATER SERVICE COMPANY.

Application No. 14027.

Decided December 30, 1927.

TRANSFER—WATER UTILITY.—The Hovey-Bandy Corporation authorized to sell and transfer to the Los Angeles Water Service Company for $2,500 its public utility water system serving Tracts 8293 and 9486 in Los Angeles County.

Knight and Reynolds, by *G. J. Knight*, for Applicant.

BY THE COMMISSION.

OPINION.

In the above entitled application, The Hovey-Bandy Corporation, operating a public utility water system supplying water to the resi-

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dents of Tracts Nos. 8293 and 9486, Los Angeles County, asks authority to sell and transfer its public utility property to the Los Angeles Water Service Company, a corporation, which joins in the application.

A public hearing in the above entitled proceeding was held before Examiner Williams at Los Angeles after all interested parties had been duly notified and given an opportunity to appear and be heard.

According to the evidence, the principal business of The Hovey-Bandy Corporation is the subdividing and marketing of real property and, for this reason, does not desire to continue in the water business and has agreed to sell its entire public utility water properties for a consideration of $2,500 cash to the Los Angeles Water Service Company, which for several years last past has been engaged solely in the business of selling and distributing water for domestic, irrigation and other purposes in the county of Los Angeles. The service company now owns and operates several public utility water plants and intends to consolidate and connect this plant with its other systems, which will result in better pressure and service to all consumers of the Hovey-Bandy system.

There is a differential in the rates now in effect on these two systems, the monthly minimum charge on The Hovey-Bandy Corporation's system being twenty-five cents greater than that on the system of the purchaser. Under the conditions existing in this particular instance, in order to avoid future complications, it appears advisable to equalize the rates and put in effect, as of January 1, 1928, on the system to be acquired herein the schedule of rates established by this Commission in its Decision No. 10070, dated February 8, 1922.

No one protested against the proposed transfer and, it appearing that the consolidation of these systems is in the public interest, we are of the opinion that the application should be granted.

ORDER.

The Hovey-Bandy Corporation, a corporation, having made application to the Railroad Commission for authority to sell its water system, including certain real property as more particularly described in the application herein, to the Los Angeles Water Service Company, a corporation, which joins in the application, a public hearing having been held thereon, the matter having been duly submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that The Hovey-Bandy Corporation, a corporation, be and it is hereby authorized to sell and transfer to the Los Angeles Water Service Company, a corporation, for the consideration of $2,500, its public utility water system in Los Angeles County, as more particularly described in the application herein, which is hereby referred to and made a part of this order, subject to the following terms and conditions:

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1. The authority hereby granted shall apply only to such transfer as shall have been made on or before March 1, 1928, and a certified copy of the final instrument of conveyance shall be filed with this Commission by The Hovey-Bandy Corporation within thirty days from the date of this order.

2. The consideration to be paid for the transfer of this property shall not be urged before this Commission or any other public body as a finding of value of said property for rate fixing or any purpose other than the transfer herein authorized.

3. Within ten days from the date on which The Hovey-Bandy Corporation actually relinquishes control and possession of the property herein authorized to be transferred, it shall file with this Commission a certified statement indicating the date upon which such control and possession were relinquished.

4. The Hovey-Bandy Corporation shall file with this Commission, within sixty days from the date of this order, a statement setting forth the financial operations of its public utility properties herein authorized to be transferred for the period commencing January 1, 1927, to and including the date control and possession of the property are relinquished.

5. Within ten days from the date of this order, Los Angeles Water Service Company, a corporation, shall file with this Commission the schedule of rates established by this Commission in its Decision No. 10070, dated February 8, 1922, which schedule of rates shall be charged by said company on the system authorized to be purchased herein for all water service rendered on and after the first day of January, 1928.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this thirtieth day of December, 1927.

DECISION No. 19202.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, ASKING PERMISSION TO PUBLISH, FILE AND PUT INTO EFFECT RATES FOR EXCHANGE, INTEREXCHANGE AND TELEGRAPH SERVICE AT RANCHO SANTA FE, SAN DIEGO, CALIFORNIA.

Application No. 14136.

Decided December 30, 1927.

SERVICE—TELEPHONE—EXCHANGE.—Pacific Telephone and Telegraph Company authorized to establish a telephone exchange at Rancho Santa Fe, San Diego County, and to make effective rates for telephone and telegraph service.

SERVICE—ACCESSORIES AND CONNECTIONS—PURCHASE OF CONSUMER'S EQUIPMENT. —A telephone utility should compensate its farmer line subscribers for their telephone property which will become nonoperative upon the establishment of a new exchange.

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J. G. Marshall, for Applicant.
L. W. Butterfield, for Santa Fe Land Improvement Company, Interested Party.

BY THE COMMISSION.

OPINION.

In this application, The Pacific Telephone and Telegraph Company, a corporation, requests permission to establish a telephone exchange at Rancho Santa Fe, San Diego County, and to make effective rates for telephone and telegraph service therefrom and thereto.

A public hearing in this proceeding was held by Examiner Gannon in Los Angeles on December 8, 1927, at which place and time the matter was submitted for decision.

Rancho Santa Fe comprises a territory of about nine thousand acres of land and its business center is situated about six miles northeast from Del Mar. The only telephone service now being furnished consists of that over two farmer lines for which switching is performed at the Del Mar exchange. The record shows that there exists a need of more adequate telephone service at Rancho Santa Fe. Applicant desires to establish an unattended machine switching central office at this point for continuous service in the town and surrounding country and to charge rates for local service as shown in its Exhibit No. 1, presented at the hearing. These rates appear reasonable for the class of service contemplated and under the conditions which will be expected to prevail, and are similar to those now in effect for service at other points under similar conditions. The toll rates now applicable to the service of the telephone subscribers located in the area proposed to be included in the new exchange are those applicable at the Del Mar exchange. Applicant proposes an initial five-cent rate for "number service" between Rancho Santa Fe and Del Mar, and rates constructed on the basis in general use throughout California for toll interexchange service to and from other points. Such rates will be five cents higher to some points southward and five cents lower to some points northward, but the net effect in charges to subscribers should be small.

No objection to the granting of this application as presented was made at the hearing and all evidence of record indicates that the interests of the community will be conserved by the establishment of this exchange.

The utility should compensate its farmer line subscribers for their telephone property which will become nonoperative with the establishment of the Rancho Santa Fe exchange.

ORDER.

The Pacific Telephone and Telegraph Company having made application to the Railroad Commission for authority to establish a telephone exchange at Rancho Santa Fe and to make effective rates for exchange telephone service therein, and rates for interexchange telephone service

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and telegraph service thereto and therefrom, a public hearing having been held in the proceeding, the matter having been submitted and being ready for decision:

The Railroad Commission hereby finds as a fact that public convenience and necessity require that The Pacific Telephone and Telegraph Company establish a telephone exchange for service at Rancho Santa Fe and surrounding territory; therefore,

It is hereby ordered, that The Pacific Telephone and Telegraph Company shall:

1. Establish and place in operation on or before May 1, 1928, a machine switching telephone exchange at Rancho Santa Fe for service in an exchange area as shown on a map thereof included in Applicant's Exhibit No. 1, presented at the hearing in this proceeding.

2. Establish on or before May 1, 1928, the primary rate area of Rancho Santa Fe exchange as shown on a map thereof in applicant's above mentioned Exhibit No. 1.

3. Establish rates for local exchange telephone service in Rancho Santa Fe exchange as set forth in applicant's above mentioned Exhibit No. 1, effective May 1, 1928.

4. Establish rates for toll interexchange telephone service between Rancho Santa Fe exchange and other points on the basis used by applicant generally throughout the State of California for similar service under similar conditions, effective May 1, 1928.

5. Establish rates for telegraph service between Rancho Santa Fe and other points on the basis used by applicant generally throughout the State of California for similar service under similar conditions, effective May 1, 1928.

6. Submit to the Railroad Commission for filing on or before February 1, 1928, maps showing the exchange area and primary rate area of Rancho Santa Fe exchange as ordered in 1 and 2 above.

7. Submit to the Railroad Commission for filing on or before February 1, 1928, the rates for local exchange telephone service, toll interexchange telephone service and telegraph service as ordered in 3, 4 and 5 above.

8. Discontinue in the Rancho Santa Fe exchange area all rates and services not provided for in 1, 2, 3, 4 and 5 above, effective May 1, 1928.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this thirtieth day of December, 1927.

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DECISION No. 19203.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA AND SUBURBAN RAILWAY COMPANY FOR AN ORDER AUTHORIZING SANTA BARBARA AND SUBURBAN RAILWAY COMPANY TO MAKE EFFECTIVE ON ITS STREET RAILWAY SYSTEM IN THE CITY OF SANTA BARBARA, CALIFORNIA, CERTAIN CHANGES IN ITS RATES.

Application No. 13964.

Decided January 3, 1928.

RATES—STREET RAILROAD—EXPERIMENTAL FARES.—Santa Barbara and Suburban Railway Company authorized to establish an experimental rate schedule of ten cents for a single cash fare, and five cents to the holder of twenty-five-cent individual weekly identification card.

RATES—STREET RAILROAD—EXPERIMENTAL FARES.—When present street railway rates do not yield sufficient revenue to meet out-of-pocket operating costs, excluding any depreciation allowance, and it is by no means certain that conditions justify a continuation of service or that any fare structure will produce enough money to pay operating expenses and yield any return, the situation calls for the trial of experimental fares.

RATES—STREET RAILROAD—EXPERIMENTAL FARES.—Experimental street railway fare of ten cents authorized, with a twenty-five-cent weekly identification card or pass entitling the holder to a five-cent fare.

Fox V. Reppy and *B. F. Woodward*, and *Griffith and Thornburgh*, for Applicant.
S. J. Bingham, City Attorney, and *T. R. Finley*, Mayor, for City of Santa Barbara, Protestant.

CARR, *Commissioner*.

OPINION.

Santa Barbara and Suburban Railway Company applies for increased rates. Public hearings have been had on the application and the matter is now ready for decision.

The present rates of this company do not yield sufficient revenue to meet the out-of-pocket costs of operating its rail and bus lines, and this without making any allowance for depreciation. It is by no means certain that conditions in Santa Barbara justify a continuation of the service or that any fare structure will produce enough money to pay operating expenses and yield any return whatsoever upon the property used in the public service.

Obviously, the situation calls for the trial of experimental fares to determine whether or not any fare structure can be devised which will make it possible to continue the service. Various forms of fare were suggested. As nearly as could be determined at the hearing, the consensus of opinion was in favor of first trying a 10-cent fare, with a 25-cent weekly identification card or pass entitling the holder to a 5-cent fare. This plan, in effect, permits any one desiring a 5-cent basic fare to purchase the right to have such a fare for 25 cents a week (or for longer period than a week at approximately the same or a lesser rate).

The argument in favor of this form of fare is that the increase will fall upon the infrequent and casual rider, while the regular rider,

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depending upon the number of times he rides, may enjoy a fare approximating the one now in effect. It lends itself readily to the efforts which should be made by the company to sell its service to the public by the use of some of the merchandising methods common to other businesses. The plan has the added advantage of doing away with the multi-coin fare, the inevitable tendency of which is to slow up traffic and irritate the rider. Under such a fare structure the company should find it easy to so improve its service in respect to keeping to time schedules as to remove present dissatisfaction on this score and thus encourage patronage of its system.

I recommend the following form of order:

ORDER.

Santa Barbara and Suburban Railway Company having made application for permission to increase the rates on its system in the city of Santa Barbara, and public hearings having been held and the matter being under submission and ready for decision:

It is hereby found as a fact that the present rates of Santa Barbara and Suburban Railway Company are unreasonable and that the rate schedule hereinafter set forth is, under all of the circumstances, reasonable as an experimental schedule, subject to change by supplemental order of this Commission upon proper showing.

Basing its order upon the foregoing findings of fact and such other facts as are contained in the opinion preceding this order and in the record;

It is hereby ordered, that Santa Barbara and Suburban Railway Company be and the same is hereby authorized to establish the following schedule of fares for its rail and bus systems:

Single cash fare to the holder of an identification card	5 cents
Individual weekly identification card	25 cents
Individual identification card for a longer period than one week	At the fare of 25 cents a week or such lesser fare as the company may fix
Single cash fare	10 cents

All subject, however, to the following conditions:

1. Applicant shall file with this Commission tariffs embodying the above fares at least five (5) days before they become effective.

2. Applicant shall publish said schedule of fares and the effective date thereof in a newspaper of general circulation in Santa Barbara for a period of five days in advance of the effective date thereof.

3. In order that the Commission may be kept informed as to the effect of the fares authorized herein, applicant shall, until further notice, furnish the Commission monthly reports showing the following information for each preceding calendar month:

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a. Detail statement of operating revenue and expense;

b. Analysis of passenger traffic.

It is hereby further ordered, that the Commission reserves the right to make such further orders in this proceeding, relative to service and fares, as may appear just and reasonable.

The effective date of this order shall be the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this third day of January, 1928.

DECISION No. 19204.

IN THE MATTER OF THE APPLICATION OF CONSERVATIVE WATER COMPANY, A CORPORATION, FOR ORDER AUTHORIZING ISSUE OF BONDS.

Application No. 9202.

(Supplemental.)

Decided January 3, 1928.

SECURITY ISSUES—BONDS.—Conservative Water Company authorized to issue and sell on or before July 31, 1928, at not less than 93 per cent of face value plus accrued interest $35,000 of its 6 per cent first mortgage bonds, to reimburse treasury and finance improvements.

SECURITY ISSUES—USE OF PROCEEDS—IN GENERAL.—While a utility used part of bond proceeds for purposes not authorized by the Commission, where this was done because of economies effected thereby, a detailed schedule of all work done and the purposes for which proceeds were expended was filed, and the utility did not wilfully and deliberately violate the order of the Commission, such expenditures were approved.

Finlayson, Bennett and Morrow, by *James S. Bennett,* for Applicant.

BY THE COMMISSION.

FIRST SUPPLEMENTAL OPINION.

The Conservative Water Company in its supplemental petition filed on January 5, 1927, as amended on December 22, 1927, asks permission to issue and sell at not less than 88.47 per cent of their face value and accrued interest $50,000 of its first mortgage 6 per cent bonds due July 1, 1953, and use $13,168.67 of the proceeds to reimburse its treasury and $21,151.95 to pay for new construction. The balance the company agrees to expend for such purposes as may hereafter be authorized by the Commission. Applicant also asks the Commission to authorize, ratify, confirm and approve the expenditure of the proceeds realized from the sale of the $200,000 of bonds, the issue of which was authorized by Decision No. 12376, dated July 20, 1923, as amended.

The Conservative Water Company was organized on or about April 21, 1904. It is engaged in the business of serving water for domestic

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and industrial uses in the city of Watts and in territory outside of said city adjacent thereto, all within the county of Los Angeles. The company has outstanding $100,000 of common stock, substantially all of which is owned by W. W. Pedder, the president of the company. By Decision No. 12376, dated July 20, 1923, as amended, the Commission authorized the company to issue $200,000 of 6 per cent first mortgage bonds due July 1, 1953. It appears that all of these bonds have been issued and that since their issue $6,000 of said bonds have been redeemed, leaving outstanding at this time $194,000.

The record shows that the company has used all of the bond proceeds for construction purposes and that in so doing it has to some extent departed from the Commission's order and used part of the proceeds for purposes not authorized by the Commission. W. W. Pedder, president of the company, testified that this was done because of the economies that could be effected by replacing mains in advance of the streets being permanently paved by the city of Watts and the county of Los Angeles. A detailed schedule of all work done and the purposes for which the proceeds were expended has been filed in this proceeding. The company asks the Commission to approve such expenditures. We are satisfied from the testimony that the company did not wilfully and deliberately violate the order of the Commission. We therefore feel that the expenditures made by the company and referred to in its supplemental petition filed on December 22d should be approved.

The record shows that the company has expended for construction purposes $13,168.67 not obtained from the sale of the bonds. The cost of new work, which is set forth in detail in schedules filed, is estimated at $21,151.95 which, added to the $13,168.67, makes a total of $34,320.62 of construction expenditures against which the company has not issued any bonds. It now asks permission to issue $50,000 of bonds and use $34,320.62 of the proceeds to finance the expenditures to which reference has just been made. It proposes to deposit the remainder of the proceeds obtained from the sale of the $50,000 of bonds in a special bank account and expend the same only as hereafter authorized by the Commission. We believe that because of the record in this proceeding the company should not be permitted to issue more than $35,000 of bonds. If the proceeds realized from the sale of such bonds are not sufficient to finance the amount heretofore expended or to be expended for construction purposes, the difference must be realized from some source other than the issue of bonds.

FOURTH SUPPLEMENTAL ORDER.

Conservative Water Company having applied to the Railroad Commission for permission to issue $50,000 of bonds and for the approval of certain construction expenditures, a public hearing having been held

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before Examiner Fankhauser and the Commission being of the opinion that the company should be permitted to issue not exceeding $35,000 of said bonds; that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expense or to income and that the company's supplemental application in so far as it involves the issue of $15,000 of bonds should be dismissed without prejudice; therefore,

It is hereby ordered, that the Conservative Water Company be and it is hereby authorized to issue and sell on or before July 31, 1928, at not less than 93 per cent of their face value and accrued interest $35,000 of its 6 per cent first mortgage bonds due July 1, 1953, and use the proceeds to reimburse its treasury to the extent of $13,168.67 and to pay in part the cost of the improvements set forth in schedules attached to the supplemental petition filed on December 22, 1927.

It is hereby further ordered, that the Commission's order in Decision No. 12376, dated July 20, 1923, as amended, be and the same is hereby further amended so as to permit the company to expend the proceeds obtained from the sale of the $200,000 of bonds referred to in said order for the purposes indicated in the schedules attached to the supplemental petition filed on December 22, 1927, and that the expenditures referred to in said schedules be and the same are hereby approved.

It is hereby further ordered, that the authority herein granted to issue bonds will become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $35, and that the Conservative Water Company shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

It is hereby further ordered, that this application in so far as it involves the issue of $15,000 of bonds be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this third day of January, 1928.

DECISION No. 19205.

IN THE MATTER OF THE APPLICATION OF AYRES-WHITESIDE TRANSPORTATION COMPANY, A COPARTNERSHIP, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE VESSELS FOR TRANSPORTATION AS A COMMON CARRIER OF FREIGHT FOR COMPENSATION BETWEEN POINTS ON THE INLAND WATERS OF THE STATE OF CALIFORNIA.

Application No. 14152.

Decided January 3, 1928.

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CERTIFICATES—VESSELS.—Ayres-Whiteside Transportation Company authorized to operate freight vessels between San Francisco and Oakland and east bay points on the one hand and Novato, Marin County, on the other hand.

Rufus H. Kimball, for Applicant.
J. J. Geary, for Northwestern Pacific Railroad Company, Protestant.

BY THE COMMISSION.

OPINION.

This is an application by a copartnership consisting of Charles Ayres and John A. Whiteside, operating vessels under the fictitious name of Ayres-Whiteside Transportation Company, for an order declaring that public convenience and necessity require the operation by it of vessels as common carriers of property for compensation between San Francisco, Oakland and east bay points on the one hand, and Novato, Marin County, on the other.

A public hearing was held before Examiner Geary at San Francisco December 7, 1927, and the matter having been duly submitted is now ready for our opinion and order.

The present freight service of applicant is between points on the San Francisco, San Pablo and Suisun bays, authorized by Decision No. 16337, in Application No. 12577, March 30, 1926, which decision permitted the operation by this applicant of vessels for the transportation of property between San Francisco, Oakland, Alameda (Encinal terminals), West Berkeley, San Rafael and Sausalito on the one hand, and Suisun, Benicia and Crockett and the intermediate points on the other, as more specifically set forth in the application.

As justification for the granting of a certificate of public convenience and necessity, the application sets forth: First, that there is no other water transportation company serving Novato, and second, that Novato is along the route covered by applicant's vessels on the through movement between San Francisco and the Suisun Bay points; also that very little additional expense is involved in maintaining a service to Novato.

The proposed rates are set forth in Exhibit "A" attached to the application and are practically the same as those now in effect between San Francisco and Benicia, except there will be a carload commodity rate of 9 cents per 100 pounds and a less than carload rate of 12 cents per 100 pounds on freight not otherwise specified.

Applicant alleges that in good faith and relying on its interpretation of the order made in Decision No. 16337 it did serve Novato until about August 1, 1927, and discontinued operations on that date upon instructions from this Commission that Novato was not on the direct water route between San Francisco and Benicia, being north of San Rafael and requiring a side trip up the Novato Creek. The instant application is made in order to cure the situation.

The manager for applicant testified that the tonnage movement was

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almost entirely to Novato and consisted principally of poultry feeds and petroleum, the total averaging approximately 100 tons per month for the period from May, 1926, to August, 1927. The largest part of this tonnage was secured at Oakland and east bay points and could be moved from point of origin to destination in approximately three hours, as compared with movement via rail consuming from two to three days. There was also testimony to the effect that a canal approximately 25 miles long had been constructed to permit the operation of vessels to a feed mill located at Novato, and the use of this canal would be materially affected if common carrier vessels were not permitted to operate to the Novato wharf. One of the owners of the feed mill at Novato testified on behalf of applicant to the effect that while they employed small vessels of their own, they found it necessary and convenient to use the services of this applicant. The mill is located some two miles from the Northwestern Pacific depot, and freight received via the railroad must pay a drayage charge of $1 per ton as compared with the wharf delivery of applicant.

The Northwestern Pacific Railroad Company protested the application, and its witness described the service and schedules of the rail carriers between San Francisco-Oakland and Novato, also the amount of tonnage moving and the time consumed in handling the freight. While this testimony showed there was a prompt rail service between San Francisco and Novato, there was no testimony dealing with the movement from the Oakland side of the bay to the conection at San Francisco. It was also shown that the rates via the rail carriers were materially higher than those proposed via the short transbay route of this applicant.

After giving careful consideration to all of the testimony and exhibits, we are of the opinion and find as a fact that public convenience and necessity require the service as set forth in the petition and that a certificate should be granted authorizing such service at the rates set forth in Exhibit "A" attached to and made part of the application. Applicant shall file with this Commission within ten days from the date of this order a written acceptance of the conditions contained in the order and shall commence operations within thirty days from the date of the order.

ORDER.

A public hearing having been held in the above entitled proceeding, the same having been duly submitted and being now ready for a decision;

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Charles Ayres and John A. Whiteside, operating under the fictitious name

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of the Ayres-Whiteside Transportation Company, of vessels for the transportation of property for compensation between San Francisco, Oakland and east bay points, on the one hand, and Novato, Marin County, on the other hand.

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted, subject to the following conditions:

Applicant shall file a written acceptance of the certificate herein granted within a period not to exceed ten days from the date hereof and shall file a tariff, according to the rules of this Commission, setting forth the rates, rules and regulations governing the transportation to be furnished, which shall be those as set forth in Exhibit "A" attached to and made a part of the application and referred to in the foregoing opinion.

Dated at San Francisco, California, this third day of January, 1928.

DECISION No. 19206.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO ELECTRIC RAILWAY COMPANY, A CORPORATION, FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE LLOYD'S EL CAJON STAGE LINE, AS A COMMON CARRIER OF PERSONS AND PROPERTY, BETWEEN THE CITY OF SAN DIEGO AND THE TOWN OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

Application No. 14230.

Decided January 3, 1928.

CERTIFICATES—AUTO STAGE—RATES.—San Diego Electric Railway Company authorized to operate auto passenger service between San Diego and El Cajon and intermediate points and to increase fare from Lookout avenue to Grossmont from five to ten cents, and between Lookout avenue and El Cajon from fifteen to twenty cents and to reduce other fares.

SCHEDULES AND TARIFFS—CONSTRUCTION AND APPLICATION.—Fares under a tariff being published as applying between La Mesa, Grossmont and El Cajon only, although the title page of the tariff reads between San Diego and El Cajon and intermediate points, the fare schedule of the tariff not corresponding to the title page would not technically permit the serving of intermediate points.

Morrison, Hohfeld, Foerster, Shuman and Clark, by Forrest A. Cobb, for Applicant.

BY THE COMMISSION.

OPINION.

The applicant is a public utility organized under the laws of the State of California, with headquarters in San Diego. By this proceeding it is seeking a certificate of public convenience and necessity to operate a passenger and express service between San Diego and El Cajon and the intermediate points and also to make certain readjustments in passenger fares bringing about both reductions and increases.

A public hearing was held at San Diego before Examiner Geary

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December 14, 1927, and the proceeding is now ready for our opinion and order.

The rights under which operations are now performed were granted in Application No. 13832 by Decision No. 18521, dated June 15, 1927, being a transfer of the common carrier service formerly performed under the fictitious name of Lloyd's El Cajon Stage Line. The common carrier operations were originally established by J. P. Lloyd prior to May 1, 1917, and were transferred to Hubert A. Adams by authority of Application No. 7328, Decision No. 9762, November 17, 1921, and, as heretofore stated, these rights were transferred from Adams to this applicant June 15, 1927. The application and the record clearly show that the predecessor of this applicant transported express packages continuously since 1917, but through some misunderstanding of the law or otherwise no tariff was ever filed with this Commission covering the express common carrier service. The express package rates maintained in the past were as follows:

For 30 pounds or less, 25 cents.
For 30 pounds and less than 75 pounds, 50 cents.
For packages over 75 pounds but not exceeding 150 pounds, 75 cents.

Applicant proposes to continue this service, but to limit the weight of packages to 125 pounds and move all shipments on the regular passenger busses. All of the interested freight carriers in any way competitive with this applicant, namely, San Diego and Arizona Railway Company, Oppenheimer Truck Line, and Pennoyer's Descanso and Alpine Stage Line, have in writing declared that they have no objection to the express service being continued under proper tariffs.

The proposed passenger fares bring about decreases at thirty-one points and increases at two points. Under the present tariff the fares are published as applying between La Mesa, Grossmont and El Cajon only, although the title page of the tariff reads between San Diego and El Cajon and intermediate points. Therefore the fare schedule of the tariff not corresponding to the title page would not technically permit applicant to serve intermediate points, although in actual practice service has been rendered at the intermediate points during the past eleven years by the former owners, by assessing the fare published to the more distant points. As illustrative of this situation, the present fare from San Diego to Seminole Drive is 35 cents, being the published fare San Diego to La Mesa. The proposed fares will be measured according to distance, thus creating a fare to Seminole Drive of 20 cents. The same is true of all other points where no specific fares are published. In addition to reducing the fares on the bus line proper, applicant proposes to give transfers to and from the San Diego Electric Railway. The only fares to be increased are from Lookout avenue to Grossmont, from 5 to 10 cents, and from Lookout avenue to El Cajon,

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from 15 to 20 cents, these adjustments being necessary in order to prevent a combination of local fares lower than the published through fare. The record shows that there is practically no movement between the points where the increases will be made.

The passenger fares and the express service and rates have the endorsement of the board of supervisors of the county of San Diego, the common councils of the cities of San Diego and El Cajon, the board of trustees of the city of La Mesa, and the chambers of commerce of the cities of San Diego and La Mesa.

There were no appearances in opposition to the application.

The proposed passenger fares and express rates are set forth in the application and exhibits attached thereto and made a part of this proceeding.

It is shown that since the operations were taken over by this applicant the number of passenger schedules has been increased and the service greatly improved.

We are of the opinion and find that there is a public convenience and necessity for the proposed passenger and express package service, and that this applicant should be given a certificate of public convenience and necessity to operate an automobile stage service between San Diego and El Cajoin and all intermediate points via the route traveled.

We further find that applicant should be authorized to put into effect by proper tariff publication the proposed passenger fares as set forth in the application and the exhibits attached thereto.

ORDER.

The San Diego Electric Railway Company, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to operate automobile passenger and express service between San Diego and El Cajon and the intermediate points, a public hearing having been held, the matter having been duly submitted and now being ready for decision;

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by applicant, San Diego Electric Railway Company, of an automobile service as proposed herein, for the transportation of passengers and express between San Diego and El Cajon and all intermediate points.

It is hereby ordered, that a certificate of public convenience and necessity for such service be and the same is hereby granted to said applicant, San Diego Electric Railway Company, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

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2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed twenty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

It is hereby further ordered, that applicant be authorized to increase the passenger fare from Lookout avenue to Grossmont from 5 to 10 cents, and between Lookout avenue and El Cajon from 15 cents to 20 cents, and make other adjustments bringing about reductions as set forth in the application and the exhibits attached thereto.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this third day of January, 1928.

DECISION No. 19207.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC MOTOR TRANSPORT COMPANY FOR AUTHORITY TO ISSUE AND SELL THREE THOUSAND SHARES OF ITS CAPITAL STOCK AT ONE HUNDRED DOLLARS PER SHARE.

Application No. 14247.

Decided January 3, 1928.

SECURITY ISSUES—STOCK.—Southern Pacific Motor Transport Company authorized to issue and sell to the Southern Pacific Company for cash for not less than $100 per share three thousand shares of its capital stock and to use the proceeds to liquidate in part advances from Southern Pacific Company and to pay other indebtedness, and Southern Pacific Company authorized to purchase and hold said stock.

E. J. Foulds, for Applicant.

BY THE COMMISSION.

OPINION.

In this application the Railroad Commission is asked to make an order authorizing Southern Pacific Motor Transport Company to issue and sell to Southern Pacific Company, at $100 a share, 3000 shares of its capital stock for the purpose of paying advances by Southern Pacific Company and of liquidating accounts payable incurred in purchasing equipment.

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Southern Pacific Motor Transport Company is a corporation organized, on or about April 16, 1927, under the laws of the State of California, for the purpose, among others, of operating automobiles as a common carrier of persons and property both within and without this state. It appears that at present it is conducting stage operations between Boulder Creek and Santa Cruz, California, in Salem and Eugene, Oregon, and over some of the highways in Oregon. Its revenues and expenses to October 31, 1927, are shown in Exhibit "1" as follows:

Transportation revenue	$60,275 03	
Transportation expenses	62,536 19	
Net loss from operation		$2,261 16
Nonoperating income		3,414 54
Gross income		$1,153 38
Miscellaneous charges to income		556 46
Surplus		$596 92

The corporation has an authorized capital stock of 10,000 shares without nominal or par value. Heretofore, under authority granted by the Commission by Decision No. 18407, dated May 25, 1927 (Vol. 29, Opinions and Orders of the Railroad Commission of California, page 796), it issued, for the purpose of paying organization costs and of financing in part the cost of acquiring properties used in Oregon, 100 shares of its stock at $100 a share, which stock, it appears, was acquired and is held by Southern Pacific Company.

In now making this application the company reports in paragraph 5 of its petition that it has acquired thirty-nine passenger busses and four service cars which, with other equipment and properties, have cost it $325,205.83. In addition it reports a special deposit with the state treasurer of Oregon of $25,273.44, consisting of United States treasury certificates. It appears, from the application and testimony herein, that applicant has acquired its property and equipment with moneys advanced by Southern Pacific Company or the amount still due is represented by accounts payable. It is stated that as of October 31, 1927, applicant owed the Southern Pacific Company $129,051.45 while its vouchers payable amounted to $231,818.42.

Applicant proposes to use the $300,000 to be received from the sale of the 3000 shares of stock to liquidate in part these outstanding debts incurred for the purpose of acquiring property. It is of record that Southern Pacific Company will acquire the entire issue of stock at the price of $100 a share.

ORDER.

Southern Pacific Motor Transport Company having applied to the Railroad Commission for permission to issue 3000 shares of stock, a

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public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that Southern Pacific Motor Transport Company be and it hereby is authorized to issue and sell, to Southern Pacific Company, for cash, at not less than $100 a share, 3000 shares of its capital stock and to use the proceeds to liquidate, in part, the advances from Southern Pacific Company and pay other indebtedness incurred for the purpose of acquiring properties.

It is hereby further ordered, that Southern Pacific Company be and it hereby is authorized to purchase at $100 a share said 3000 shares of stock which Southern Pacific Motor Transport Company is herein authorized to issue, and hold the same.

It is hereby further ordered, that the authority herein granted shall become effective upon the date hereof and, further, that Southern Pacific Motor Transport Company shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this third day of January, 1928.

DECISION No. 19208.

IN THE MATTER OF THE APPLICATION OF SOUTHWEST STORAGE COMPANY, INCORPORATED, A CORPORATION, FOR AUTHORITY TO INCUR INDEBTEDNESS.

Application No. 14261.

Decided January 3, 1928.

SECURITY ISSUES—NOTE.—Southwest Storage Company authorized to issue a $10,000 seven per cent note payable on or before five years after date and to use proceeds to pay indebtedness.

Merriam, Reinhart and Merriam, by *Ralph T. Merriam*, for Applicant.

BY THE COMMISSION.

OPINION.

In this application the Southwest Storage Company, Inc., asks permission to issue a 7 per cent note payable on or before five years after date for the sum of $10,000; to use the proceeds to pay indebtedness; and to execute a mortgage to secure payment of such note.

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Applicant is doing business as a public utility warehouseman in San Bernardino. It is also engaged in the wholesale and retail fuel, grain and feed business at Pasadena and also in the bottled water business in connection with its warehouse at San Bernardino.

By Decision No. 13249, dated March 7, 1924, in Application No. 9708, the Commission authorized applicant to issue a $6,000 note and to execute a mortgage to secure the payment of an authorized note issue of $10,000. By Decision No. 15861, dated January 15, 1926, in Application No. 12373, the Commission authorized the company to issue an additional note for the sum of $2,000, the payment of which was secured by the deed of trust executed under the authority granted in Decision No. 13249. It is of record in this proceeding that there is now due on the notes referred to $6,067.

The testimony shows that the company now owes for street improvements $1,775 and that it has outstanding accounts payable of $8,541.90 and notes other than those mentioned of $1,400.

Applicant's assets and liabilities as of November 1, 1927, are reported as follows:

Assets.

Real estate	$18000 00
Building	6,000 00
Trucks, machinery and equipment	2,500 00
Miscellaneous assets	1,500 00
Cash on hand and in bank	1,316 71
Notes receivable	300 00
Accounts receivable	4,473 27
Merchandise	4,100 26
Total assets	$38,190 24

Liabilities.

Notes payable- banks	$1,400 00
Accounts payable	8,541 90
Notes secured by mortgage	6,067 53
Street assessment	1,775 00
Total liabilities	$17,784 43
Net worth	20,405 81
	$38,190 24

The refinancing of the loan secured by the mortgage heretofore authorized by the Commission will enable the company to reduce its annual interest charges from 9 per cent to 7 per cent, and will also relieve the company of a large monthly payment on the principal. Applicant's officers are of the opinion that it will be able to sell or lease on advantageous terms some of its properties located in San Bernardino and thus obtain funds to pay, prior to maturity, the $10,000 note which it now asks permission to issue.

A copy of the company's proposed mortgage has been filed in this proceeding. It will be a lien on the company's real properties situated

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in San Bernardino, and will be executed to Robert D. Barry who has agreed to loan applicant the $10,000 referred to. We find the proposed mortgage to be in satisfactory form.

ORDER.

Southwest Storage Company, Inc., having applied for permission to issue a $10,000 note and execute a mortgage, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant for the purposes specified herein, and that the expenditures are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Southwest Storage Company, Inc., be and it is hereby authorized to issue a $10,000 7 per cent note payable on or before five years after date and use the proceeds to pay part of its indebtedness existing on November 1, 1927.

It is hereby further ordered, that the Southwest Storage Company, Inc., be and it is hereby authorized to execute a mortgage substantially in the same form as the mortgage filed in this proceeding on December 7, 1927, provided that the authority herein granted to execute said mortgage is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such legal requirements to which said mortgage may be subject.

It is hereby further ordered, that the authority herein granted to issue said note and execute said mortgage will become effective when applicant has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

It is hereby further ordered, that within thirty days after the execution of the mortgage herein authorized, Southwest Storage Company, Inc., shall file with the Railroad Commission a certified copy of such instrument.

Dated at San Francisco, California, this third day of January, 1928.

DECISION No. 19209.

IN THE MATTER OF THE APPLICATION OF "SAN GABRIEL CANYON STAGE LINE" FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A PASSENGER AND FREIGHT SERVICE AS A COMMON CARRIER BETWEEN AZUSA AND CAMP BONITA, COLDBROOK CAMP AND INTERMEDIATE POINTS IN THE SAN GABRIEL CANYON.

Application No. 14281.

Decided January 3, 1928.

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CERTIFICATES—AUTO STAGE.—A. L. Meier and J. E. Williamson authorized to operate automotive service for the transportation of passengers, freight and baggage between Azusa and Coldbrook Camp and Camp Bonita and intermediate points.

BY THE COMMISSION.

OPINION AND ORDER.

A. L. Meier and J. E. Williamson, copartners, operating under the fictitious name of San Gabriel Canyon Stage Line, have applied to the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of a common carrier automotive service for the transportation of passengers and property between Azusa and Camp Bonita, Coldbrook Camp and intermediate points in the San Gabriel Canyon and tributaries thereto.

Applicants propose to charge rates and fares and to give service in accordance with the rates and fares and time schedules now on file in their name with the Railroad Commission, which tariffs and time schedules were adopted by them following transfer to them, by Jennie H. Follows, with the approval of the Railroad Commission, of the operating right heretofore issued by the Railroad Commission to Ralph M. Follows. Equipment proposed to be used is shown in Exhibit "A," which is attached to the application herein and made a part thereof.

It is declared by applicants that the so-called Follows right, which authorizes a combined automotive and horse-drawn stage service in the territory herein proposed to be served, is not sufficiently broad in its scope to meet present-day requirements. They declare that an all-automotive service is now possible because of recent road construction work and, declaring further that because of said road changes it is now possible to serve a wider territory and points not in existence at the time of the granting of the Follows right, ask for a new certificate in lieu of the certificate they recently acquired. Further, they declare that roads and highways in San Gabriel Canyon have been changed, eliminating certain points and making service to new points possible.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted. There are no other carriers serving the territory proposed to be served by the applicants herein.

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by A. L. Meier and J. E. Williamson, copartners, of a common carrier automotive service for the transportation of passengers, freight and baggage between Azusa and Coldbrook Camp and Camp Bonita and intermediate points via all public highways between Azusa and said points within San Gabriel Canyon and its tributaries; and

It is hereby ordered, that a certificate of public convenience and necessity for such a service be and the same hereby is granted to A. L.

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Meier and J. E. Williamson, copartners, said certificate to be in lieu of and not in addition to the certificate of public convenience and necessity heretofore acquired by said A. L. Meier and J. E. Williamson from Jennie H. Follows.

It is hereby further ordered, that the certificate herein granted be issued subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof, said acceptance to contain a statement that certificate herein granted is accepted in lieu of the so-called Follows operating right.

2. Applicants shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those on file in their name with the Railroad Commission, or rates and time schedules satisfactory to the Railroad Commission, and shall also file as part of said tariff a sketch showing territory proposed to be served within the limits of said certificate.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this third day of January, 1928.

DECISION No. 19212.

IN THE MATTER OF THE APPLICATION OF L. G. MONROE, WM. C. LYON AND L. J. MILLER FOR AN ORDER AUTHORIZING THE ISSUING OF QUALIFYING SHARES OF APTOS WATER COMPANY, A CORPORATION.

Application No. 14241.

Decided January 3, 1928.

SECURITY ISSUES—QUALIFICATION OF DIRECTORS.—Aptos Water Company authorized to issue and sell at not less than par three shares of its capital stock of the aggregate par value of $3 to qualify directors.

Hankins and Hankins, for Applicant.

BY THE COMMISSION.

ORDER.

Application having been made to the Railroad Commission for an order authorizing Aptos Water Company to issue three shares of its

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capital stock, of the aggregate par value of $3, to its directors, and it appearing that Aptos Water Company was organized on or about November 18, 1927, under the laws of the State of California for the purpose, among others, of purchasing and operating a public utility water system, now operated by Fred L. Somers and Aptos Company and serving water in and about the town of Aptos, Santa Cruz County, and the Railroad Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the issue of stock is reasonably required by Aptos Water Company, for the purposes specified herein and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Aptos Water Company be and it hereby is authorized to issue and sell, at not less than par, three shares of its capital stock of the aggregate par value of $3, and to use the proceeds to pay in part organization and incorporation expense, such authority to become effective upon the date hereof.

It is hereby further ordered, that Aptos Water Company shall keep such record of the issue of the stock herein authorized, and of the disposition of the proceeds, as will enable it to file, within thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this third day of January, 1928.

Decision No. 19214.

IN THE MATTER OF THE APPLICATION OF H. ALLEN RISPIN AND THE CAPITOLA COMPANY (A CORPORATION) FOR AUTHORITY TO SELL THE GAS, ELECTRIC AND WATER SYSTEMS AND PROPERTIES OPERATED BY SAID THE CAPITOLA COMPANY TO PUBLIC UTILITIES CALIFORNIA CORPORATION (A CORPORATION), AND FOR AUTHORITY FOR PUBLIC UTILITIES CALIFORNIA CORPORATION TO BUY SAID SYSTEMS AND PROPERTIES AND TO ISSUE SHARES OF ITS CAPITAL STOCK OF THE PAR VALUE OF SIXTY THOUSAND DOLLARS AND ITS FIRST MORTGAGE GOLD BONDS OF THE FACE AMOUNT OF EIGHTY-FIVE THOUSAND DOLLARS, AND A PROMISSORY NOTE FOR THE AMOUNT OF CAPITAL ADDITIONS MADE BETWEEN APRIL 22, 1927, AND THE DATE OF THE TRANSFER.

Application No. 14041.

Decided January 5, 1928.

TRANSFER—SECURITY ISSUES.—H. Allen Rispin and The Capitola Company authorized to transfer to the Public Utilities California Corporation properties used in supplying water in the vicinity of Capitola and Soquel and electricity at Capitola. Public Utilities California Corporation authorized to issue in payment therefor not exceeding $66,000 of first mortgage 6 per cent twenty-year bonds and not exceeding $44,000 of common stock.

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Eels and Orrick, by *T. W. Dahlquist* and *Hillyer Brown*, for Public Utilities California Corporation.
H. Allen Rispin, for himself and for The Capitola Company.

BY THE COMMISSION.

OPINION.

In this proceeding the Railroad Commission is asked to enter its order authorizing H. Allen Rispin and The Capitola Company to sell to the Public Utilities California Corporation their public utility and other properties described in Exhibit "C" attached to the petition herein. The Public Utilities California Corporation asks permission to acquire said properties and to issue in payment therefor as they existed on April 22, 1927, $60,000 of common stock and $85,000 of first mortgage 6 per cent 20-year bonds.

The Public Utilities California Corporation further asks permission to issue its unsecured promissory note bearing interest at the rate of 6 per cent per annum and payable one year after date in an amount equal to the cost of the capital additions made to the public utility properties of The Capitola Company between April 22, 1927, and the date of the transfer of the properties to the Public Utilities California Corporation. In view of the fact that we do not at this time know the amount of the note, its issue will be considered in a supplemental order. While the company asks permission to execute a mortgage to secure the payment of its proposed bond issue, a similar request is contained in Application No. 14024. The order in that proceeding will authorize the execution of the mortgage. It is therefore not necessary to give further consideration to its request for permission to execute a mortgage to secure the payment of the proposed $85,000 bond issue.

It appears from the record that The Capitola Company is engaged, among other things, in the business of supplying water for domestic and other purposes in and in the vicinity of Capitola and Soquel, and electricity for like purposes at Capitola. These towns are located on Monterey Bay approximately four miles east of the city of Santa Cruz.

The water supply is obtained by diverting the waters of Bates Creek at a point about three miles north of Capitola. This, it appears, is accomplished by means of a concrete arch dam 35 feet in height with a crest length of 40 feet. From this point the water flows through a six-inch wooden stave pipe line approximately 6230 feet in length to a 250,000-gallon earthen reservoir located a short distance north of the town of Soquel. The Capitola supply flows from the reservoir through a six-inch cast iron main approximately two miles in length. An additional supply is obtained for the communities served by means of a motor-driven booster pump, which pumps directly from Soquel Creek into the supply lines of the Soquel and Capitola areas. This pump is operated for emergency purposes only. The water supply, it is said, is protected against pollution through the ownership by the company

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of a portion of the watershed area above the diverting dam, and is further protected by chlorination. The distribution system supplying water to Soquel and Capitola consists of 48,400 feet or 9.2 miles of mains varying from six to three-quarter inch in diameter. The services connected to the system total 546, of which 47 are metered.

The electric properties supply Capitola and the immediate vicinity with electrical energy purchased from the Coast Counties Gas and Electric Company. The electric distribution system consists mainly of 11,000 feet of 2200-volt three-phase primary circuit. Three hundred services, of which 280 are metered, are connected with the system.

It further appears that The Capitola Company in connection with its other utility business at one time installed a small gas system. This system has since been abandoned and the equipment used has been removed and is in storage in Capitola. Reference will hereafter be made to the estimated cost of the gas system.

There has been filed in this proceeding as applicant's Exhibit "D" an appraisal of the properties as of April 30, 1927, prepared by The Loveland Engineers, Inc. In this appraisal, as corrected, at the hearing had on December 1st, the estimated original cost new of the physical properties is reported at $162,202. This includes an allowance of $20,741 for the nonoperative gas properties. The estimated reproduction cost new less depreciation calculated on a 6 per cent sinking fund basis is reported at $128,062. The latter figure includes an allowance of $5,631 as representing the salvage value of the nonoperative gas properties. The estimated original cost of the water and electric physical properties is reported by The Loveland Engineers at $109,455. Their report shows a sinking fund accumulation of $11,980, which, if deducted from the estimated original cost, leaves a balance of $97,475. If to this be added the salvage value of the gas properties amounting to $5,631 one arrives at a total of $103,106. As stated, the above figures do not include any intangible elements of value. For these purposes in their estimate of reproduction cost new, The Loveland Engineers allow $3,000 for organization and preliminary expense, $2,000 for franchises, $3,500 for water rights, $555 for the cost of acquiring lands and searching land titles, and $3,500 for going concern values, or a total of $12,555. The same amounts are allowed for the respective purposes in estimating the original cost of the properties, except that for franchises an allowance of $600 instead of $2,000 is made.

The Commission's engineers in Exhibit No. 3 estimate the reproduction cost new of the operative physical properties (exclusive of materials and supplies) of The Capitola Company and of H. Allen Rispin at $128,501. To this they add $20,329 as representing their estimated cost of the nonoperative gas properties, making a total of $148,830, as compared with The Loveland Engineers' estimate for the same items

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of property, of $159,987. The reproduction cost new less depreciation calculated on a 5 per cent sinking fund basis is estimated by the Commission's engineers at $113,427 and on straight line basis at $96,096. The Commission's engineers do not submit figures showing the actual or estimated original cost of the properties.

We have considered the evidence submitted and are of the opinion that the Public Utilities California Corporation should not pay more than $110,000 for the properties of H. Allen Rispin and The Capitola Company as the same existed on April 22, 1927. The properties are to be acquired free and clear of all encumbrances. Of the purchase price 60 per cent may be paid through the issue of first mortgage 6 per cent 20-year bonds and 40 per cent through the issue of common stock.

When applicant, Public Utilities California Corporation, has filed a statement showing the cost of additions and betterments from April 22, 1927, to the date of the transfer of the properties, consideration will be given to the issue of the one-year note.

ORDER.

H. Allen Rispin and The Capitola Company having asked permission to sell their public utility and other properties, referred to in this application, to the Public Utilities California Corporation, and said Public Utilities California Corporation having asked permission to purchase said properties and to issue $60,000 of common stock and $85,000 of bonds, and a promissory note, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the Public Utilities California Corporation should be permitted to issue $66,000 of bonds and $44,000 of stock and that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant, Public Utilities California Corporation, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application in so far as it involves the issue of $19,000 of bonds and $16,000 of stock should be dismissed without prejudice; therefore,

It is hereby ordered, as follows:

1. H. Allen Rispin and The Capitola Company may sell and transfer the properties referred to in this application and more particularly described in Exhibits "C" and "D" to the Public Utilities California Corporation, and may, if, as and when said Public Utilities California Corporation acquires said properties, discontinue their public utility service.

2. Public Utilities California Corporation may issue in payment for the properties referred to herein as the same existed on April 22, 1927, provided said properties are acquired free and clear of all liens and encumbrances, not exceeding $66,000 of first mortgage 6 per cent

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20-year bonds and not exceeding $44,000 of common stock, the issue of said bonds and stock to be the only consideration that may be paid for said properties.

3. This application in so far as it involves the issue of $19,000 of bonds and $16,000 of common stock be and the same is hereby dismissed without prejudice.

4. The authority herein granted to issue the bonds will become effective when applicant, Public Utilities California Corporation, has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $66, and when the Commission has authorized said company to execute a mortgage to secure the payment of said bonds.

5. Within ten days after the transfer of the properties herein authorized The Capitola Company shall file with the Commission a statement showing the date on which the properties were transferred and the date on which it relinquished possession of the same.

6. Within thirty days after the transfer of the properties herein authorized, the Public Utilities California Corporation shall file with the Commission a certified copy of the deed and any other instruments of conveyance under which it acquires and holds title to said property.

7. Public Utilities California Corporation shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this fifth day of January, 1928.

DECISION No. 19215.

IN THE MATTER OF THE APPLICATION OF SANTA CRUZ COUNTY UTILITIES (A CORPORATION) FOR AUTHORITY TO SELL ITS ELECTRIC AND WATER SYSTEMS AND PROPERTIES TO PUBLIC UTILITIES CALIFORNIA CORPORATION (A CORPORATION), AND FOR AUTHORITY FOR PUBLIC UTILITIES CALIFORNIA CORPORATION TO BUY SAID SYSTEMS AND PROPERTIES AND TO ISSUE SHARES OF ITS CAPITAL STOCK OF THE PAR VALUE OF ONE HUNDRED FORTY THOUSAND DOLLARS, AND ITS FIRST MORTGAGE GOLD BONDS OF THE FACE AMOUNT OF ONE HUNDRED FORTY THOUSAND DOLLARS, AND A PROMISSORY NOTE FOR THE AMOUNT OF CAPITAL ADDITIONS MADE BETWEEN APRIL 6, 1927, AND THE DATE OF THE TRANSFER OF THE PROPERTIES.

Application No. 14024.

Decided January 5, 1928.

TRANSFER—SECURITY ISSUES.—Santa Cruz County Utilities, operating an electric light and power plant in Boulder Creek and Brookdale and a water works system in Boulder Creek, Ben Lomond, Brookdale and vicinity, authorized to transfer its properties to Public Utilities California Corporation and the latter

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authorized to issue in payment therefor not exceeding $90,000 of first mortgage 6 per cent twenty-year bonds, and not exceeding $60,000 of common stock.

VALUATION—INTANGIBLES—IN GENERAL.—In estimating reproduction cost of utility properties in an application to transfer and issue securities, the Commission's engineers included in their figures no allowance for intangibles, such as development expenses, water rights or going concern value.

SECURITY ISSUES—IN GENERAL—NECESSITY OF VALUATION.—In a proceeding involving the transfer and recapitalization of public utility properties it is not necessary that the Commission determine the present value of the lands inolved.

Eells and Orrick, by *T. W. Dahlquist* and *Hillyer Brown*, for Public Utilities California Corporation and Santa Cruz County Utilities.
Bert B. Snyder, for San Lorenzo Valley Chamber of Commerce.
Wm. J. Locke, for The Brookdale Club, a corporation.

BY THE COMMISSION.

OPINION.

Santa Cruz County Utilities asks permission to sell its public utility business and properties to the Public Utilities California Corporation, and sell its nonoperative real property described in the indenture filed December 9th to H. E. McGinty. The Public Utilities California Corporation asks permission to purchase said public utility properties and issue in payment therefor $140,000 of stock and $140,000 of first mortgage 6 per cent bonds. It also asks permission to issue a one-year 6 per cent note equal in face amount to the cost of additions and betterments installed by the Santa Cruz County Utilities from April 6, 1927, to the date of the transfer of the properties, and to execute a mortgage to secure the payment of an authorized bond issue of $1,000,000.

The Santa Cruz County Utilities is the owner of and operates an electric light and power plant in the towns of Boulder Creek and Brookdale and a waterworks system in the towns of Boulder Creek, Ben Lomond, Brookdale and in the vicinities thereof.

The company as of May 31, 1927, had outstanding $75,000 of stock divided into $25,000 of preferred and $50,000 of common, and $37,500 of serial bonds. As of the same date it reports $15,000 of notes and $8,743.03 of accounts payable. Substantially all of the stock is owned by J. C. Hughes and his wife, Jessie F. Hughes.

It appears that on April 6, 1927, the Santa Cruz County Utilities granted to W. B. Foshay Company a sixty-day option to purchase its business, together with all its franchises and physical properties, both real and mixed, for the total purchase price of $125,000, and the assumption by W. B. Foshay Company of the payment of $37,500 of bonds. W. B. Foshay Company has concluded to acquire the properties for the consideration mentioned and has assigned its agreement to the Public Utilities Consolidated Corporation. They have caused to be organized under and by virtue of the laws of this state the Public Utilities California Corporation, which has an authorized stock issue of $300,000 divided into 3000 shares of the par value of $100 per share. All of the stock is common.

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The Santa Cruz County Utilities proposes to sell all of its properties, except approximately 185 acres of nonoperative land, to Public Utilities California Corporation. The 185 acres of land will be transferred to H. E. McGinty in order that the proposed mortgage of the Public Utilities California Corporation will not become a lien on such properties.

Testimony was submitted by The Loveland Engineers, Inc., and by the Commission's engineers showing their estimates of the cost to reproduce new the operative and nonoperative properties of Santa Cruz County Utilities. The Loveland Engineers also submitted testimony showing their estimate of the historical cost of the properties, including present value of land and their estimate of the sound value of such properties. They submitted the following estimates, which are as of April 30, 1927:

Cost to reproduce the properties new	$356,112 00
Cost to reproduce the properties new less depreciation calculated on 6 per cent sinking fund basis	312,079 00
Estimated historical cost new of the properties, including present value of land	292,376 00
Estimated historical cost new less depreciation calculated on a 6 per cent sinking fund basis	266,352 00
Estimated sound value of properties	297,000 00

The Commission's engineers estimated the reproduction cost new of the operative and nonoperative physical properties, exclusive of materials and supplies, at $295,751. For the same items of property covered by the Commission's engineers The Loveland Engineers submitted an estimate of $304,365. The reproduction cost new less depreciation, calculated on a 5 per cent sinking fund basis, is reported by the Commission's engineers at $251,684 and on a straight line basis at $225,152. In this connection it should be said that the Commission's engineers included in their figures no allowance for intangible items of property such as development expense, water rights or going concern value. The Loveland Engineers included in their estimates a total of $46,818 for such purposes.

It was stipulated at the hearing that the Commission might consider in evidence the annual reports filed by the Santa Cruz County Utilities. An estimate of the revenues and expenses for 1928 was submitted by F. J. Keys, who will be the operating manager of the Public Utilities California Corporation. His testimony, however, shows that his estimate is not based upon a careful survey of the territory or on a familiarity with the properties. We do not believe that the properties for 1928 will show $17,970, the amount estimated by F. J. Keys, available for depreciation, interest, federal income tax, dividends and surplus. His estimate for state taxes is obviously too low.

We are here concerned with the transfer and recapitalization of public utility properties whose capitalization and rates have been fixed

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by former orders of the Commission. True, since the issue of the stock and bonds authorized by the Commission the company has acquired additional properties through the issue of short-term notes, through accounts payable and through the investment of reserves and surplus. But even giving consideration to such additional investments, the cost of the property which we feel should form the basis for the capitalization thereof, giving due regard to earnings, is much less than any of the valuations submitted. The valuations submitted, considered in connection with the earnings of the properties, are such that in our opinion they can not be used as a basis for the capitalization of the properties. This being the case, there is no need to make further comment on them.

Public Utilities California Corporation asks, as said, permission to issue $140,000 of stock and $140,000 of bonds for the properties of Santa Cruz County Utilities as the same existed on April 6, 1927, and to issue a one-year 6 per cent note equal in amount to the cost of the additions and betterments from said date to the date of the transfer of the properties. After considering the record in this proceeding we are of the opinion that the Santa Cruz County Utilities should be permitted to sell its public utility properties to the Public Utilities California Corporation, which corporation should be permitted to acquire said properties and issue in payment for the properties, as the same existed on April 6, 1927, free and clear of all liens and encumbrances, not exceeding $90,000 of first mortgage 6 per cent 20-year bonds and not exceeding $60,000 of common stock. The said bonds and stock represent the total consideration which the Public Utilities California Corporation may pay for said properties.

Some of the consumers of Santa Cruz County Utilities were represented at the hearings and took exception to certain of the valuation figures submitted, particularly the reported present value of lands. In our opinion it is not necessary that the Commission, for the purpose of this proceeding, determine the present value of the lands of Santa Cruz County Utilities, and therefore no specific finding need be made as to said value.

There was filed with the Commission on November 17th a copy of the proposed mortgage of Public Utilities California Corporation. This mortgage was reviewed by the Commission and certain changes suggested. The changes were made by representatives of the company and a revised copy filed on December 30th. The revised copy is in satisfactory form and its execution, we believe, should be authorized.

When Public Utilities California Corporation has filed a statement showing the cost of additions and betterments for the properties of Santa Cruz County Utilities from April 6, 1927, to the date of the transfer of such properties, consideration will be given to authorizing the issue of the one-year note referred to in this application.

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ORDER.

Santa Cruz County Utilities having asked permission to sell its public utility properties to Public Utilities California Corporation and to sell its nonpublic utility real property described in this application to H. E. McGinty, and said Public Utilities California Corporation having asked permission to purchase the public utility properties of Santa Cruz County Utilities and to issue in payment therefor $140,000 of common stock and $140,000 of bonds and a promissory note, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the Public Utilities California Corporation should be permitted to issue $90,000 of bonds and $60,000 of stock and that the money, property or labor to be procured or paid for by such issue is reasonably required by said applicant, Public Utilities California Corporation, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expense or to income, and that this application in so far as it involves the issue of $50,000 of bonds and $80,000 of stock, should be dismissed without prejudice; therefore,

It is hereby ordered, as follows:

1. Santa Cruz County Utilities may sell and transfer the properties described in Exhibit "C" and in the indenture filed on December 9, 1927, to the Public Utilities California Corporation and may if, as and when said Public Utilities California Corporation acquires said properties, discontinue its public utility service. Santa Cruz County Utilities may also sell the nonoperative real property described in the indenture filed December 9, 1927, to H. E. McGinty.

2. Public Utilities California Corporation may acquire said public utility properties and issue in payment for said public utility properties, as the same existed on April 6, 1927, provided said properties are acquired free and clear of all liens and encumbrances, not exceeding $90,000 of first mortgage 6 per cent 20-year bonds and not exceeding $60,000 of common stock, the issue of said bonds and stock being the only consideration that may be paid for said properties.

3. This application in so far as it involves the issue of $50,000 of bonds and $80,000 of common stock be and the same is hereby dismissed without prejudice.

4. Public Utilities California Corporation may execute a mortgage substantially in the same form as the mortgage filed in this proceeding on December 30, 1927, provided that the authority herein granted to execute said mortgage is for the purpose of this proceeding only, and is granted in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

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5. The authority herein granted to issue bonds will become effective when applicant, Public Utilities California Corporation, has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $90, and when said applicant has executed the mortgage referred to herein.

6. Within ten days after the transfer of the properties herein authorized, the Santa Cruz County Utilities shall file with the Commission a statement showing the date on which the properties were transferred and the date on which it relinquished possession of the same.

7. Within sixty days after the transfer of the properties herein authorized, Public Utilities California Corporation shall file with the Commission a certified copy of the deed and any other instruments of conveyance under which it acquires and holds title to said properties, and also two certified copies of the mortgage which it is herein authorized to execute.

8. Public Utilities California Corporation shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this fifth day of January, 1928.

DECISION No. 19216.

IN THE MATTER OF THE APPLICATION OF ELK GROVE TELEPHONE COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING A REVISION OF ITS RATES FOR TELEPHONE SERVICE.

Application No. 14129.

Decided January 9, 1928.

RATES—TELEPHONE UTILITY.—Rates established for Elk Grove Telephone Company, serving Elk Grove and vicinity.

Ernest Irwin, for Applicant.

CARR, COMMISSIONER.

OPINION.

Elk Grove Telephone Company, successor of Elk Grove Mutual Telephone Association, applies for an increase of rates.

A public hearing has been had and the matter is now ready for decision.

Applicant's predecessor operated on a mutual basis, its equipment being owned almost entirely by the subscribers and its rates being only such as would pay operating expenses, including maintenance of subscriber-owned lines (re *Elk Grove Mutual Telephone Association*, 22 C. R. C. 456). About a year and a half ago applicant secured permis-

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sion to issue stock to acquire a little property owned by its predecessor and also to secure funds to acquire farmer-owned lines and to extend the system necessary to properly serve Elk Grove and vicinity (re *Elk Grove Mutual Telephone Association and Elk Grove Telephone Company*, 27 C. R. C. 739).

Since the date of the last cited order applicant has acquired such property of its predecessor and also certain lines and property from subscribers, as well as carrying through a substantial amount of new construction, so that at the present time $31,500 represents a reasonable figure for its rate base.

The present rate structure of the company will just about pay operating expenses, including maintenance of subscribers' lines, but without any return upon the property which the company owns. Clearly, applicant is entitled to relief which will yield it a return upon its property used in the telephone service at Elk Grove.

Under the evidence, $7,500 should cover the operating expenses of the applicant. The rates herein authorized should yield approximately $9,700, which will take care of operating expense and leave a reasonable amount over as a return on the rate base hereinabove found reasonable.

There are still some 86 stations in the primary rate area owned by subscribers. Special rates for such subscribers may be discontinued, as it appears from the testimony that applicant will speedily acquire full ownership of all equipment in the primary rate area.

I recommend the following form of order:

ORDER.

Elk Grove Telephone Company having requested an order of the Railroad Commission of the State of California authorizing a revision of its rates, a public hearing having been held, the matter having been submitted and being now ready for decision:

The Railroad Commission of the State of California hereby finds as a fact that the rates now charged by Elk Grove Telephone Company for telephone service are unjust and unreasonable in so far as they differ from the rates set forth in Exhibit "A," attached hereto.

Basing its order on the foregoing finding of fact and such other findings of facts as are set forth in the opinion preceding this order;

It is hereby ordered, that Elk Grove Telephone Company be and it is hereby authorized to make certain modifications in its operations and may, effective March 1, 1928:

(1) Charge and collect for exchange telephone service the rates and charges shown in Exhibit "A," attached hereto and made a part of this order.

(2) Establish a primary rate area boundary described as follows:

Beginning at a point 2000 feet north of the southern boundary of Sec. 36, T. 7 N., R. 5 E., and 500 feet west of the eastern boundary of said Sec. 36, T.

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7 N., R. 5 E., and extending easterly parallel with and 2000 feet north of the common boundary of townships 6 N. and 7 N. (center line of highway designated Main street, Elk Grove, California) to a point 200 feet west of the eastern boundary of Sec. 31, T. 7 N., R. 6 E.; thence southerly paralleling section lines to a point 1500 feet south of the common boundary of townships 6 N. and 7 N.; thence westerly paralleling said township line to a point 500 feet west of the eastern boundary of Sec. 1, T. 6 N., R. 5 E.; thence northerly paralleling section lines to the pont of beginning.

(3) Withdraw the service provided in exchange service schedule designated No. A-1 now on file with the Railroad Commission of the State of California and cancel the rates therein.

It is hereby further ordered, that Elk Grove Telephone Company be and it hereby is authorized to submit for filing on or before February 15, 1928:

(1) Schedules of rates designated Exchange Service Schedules A-2, A-4, A-5 and A-6, as set forth in Exhibit "A," attached hereto, superseding, respectively, similarly numbered schedules now on file with the Railroad Commission of the State of California.

(2) Map showing its primary rate area with boundary as described above.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this ninth day of January, 1928.

EXHIBIT "A."

EXCHANGE SERVICE SCHEDULE No. A-2.

General service. Elk Grove.

Applicable to individual and party line service within the primary rate area of the Elk Grove exchange.

	Rate per station per month			
	Business service		Residence service	
Rate.	Wall set	Desk set	Wall set	Desk set
Individual line	$3 00	$3 25	$2 25	$2 50
Two-party line	2 50	2 75	2 00	2 25
Six-party line	-----	-----	1 50	1 75
Extension (with or without bell)	1 00	1 25	75	1 00

Conditions.

(1) Individual and two-party line services will be provided outside the primary rate area and within the exchange area at the above rates plus mileage rates.
(2) Extension equipment furnished at the above rates will be installed upon the same premises as the primary station.

EXCHANGE SERVICE SCHEDULE No. A-4.

Mileage rates.

Applicable to individual and two-party line service furnished outside the primary rate area and within the exchange area of the Elk Grove exchange.

Rate.	Rate per ¼ mile or fraction per month
Each individual line primary station	$0 50
Each two-party line primary station	35

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Conditions.

(1) The above rates are based on the air-line distance measured between the subscriber's primary station and the nearest point on the boundary of the primary rate area.

(2) The charge for service under the above rates is in addition to the regular flat rate charges.

EXCHANGE SERVICE SCHEDULE No. A-5.

Subscriber-owned rural service.

Applicable to subscriber-owned rural party-line service outside the primary rate area of the Elk Grove exchange.

	Rate per station per month	
Rate.	Business service	Residence service
Party-line service	$1 75	$1 25

Conditions.

The company furnishes switchboard and all facilities to the boundary of the primary rate area. The subscriber furnishes facilities from the boundary of the primary rate area to the subscriber's premises, also complete station installation, telephone instrument and initial batteries.

The company maintains all lines and equipment.

Service under this schedule will be provided for a minimum of one subscriber per each two miles or major fraction thereof of circuit, measured along the route of the line, but in no case for less than two subscribers per line circuit.

EXCHANGE SERVICE SCHEDULE No. A-6.

Suburban service.

Applicable to suburban party-line service within the suburban area of the Elk Grove exchange.

	Rate per station per month			
	Business service		Residence service	
Rate.	Wall set	Desk set	Wall set	Desk set
Suburban service	$3 00	$3 25	$2 50	$2 75

Conditions.

The company installs, owns and maintains all lines and equipment necessary to furnish service.

DECISION No. 19217.

IN THE MATTER OF THE APPLICATION OF BELVEDERE WATER CORPORATION FOR A CERTIFICATE DECLARING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE AN EXTENSION OF APPLICANT'S SYSTEM INTO TERRITORY CONTIGUOUS THERETO.

Application No. 14211.

Decided January 9, 1928.

CERTIFICATE—WATER UTILITY—EXTENSION.—Belvedere Water Corporation, serving territory adjacent to the easterly boundary of Los Angeles, authorized to extend service into contiguous territory.

FRANCHISES—NECESSITY OF OBTAINING.—When pipe lines and appurtenant fixtures of a water utility are installed prior to the dedication of the streets and alleys to public use, a county franchise will not be required.

McCutchen, Olney, Mannon and Greene, by *John T. Pigott*, for Applicant.

BY THE COMMISSION.

OPINION.

Belvedere Water Corporation, applicant in the above entitled proceeding, operating a public utility water system supplying water to a large territory adjacent to the easterly boundary of the city of Los

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Angeles, known as Belvedere, asks the Railroad Commission for a certificate of public convenience and necessity to extend its system into contiguous territory.

A public hearing in this matter was held before Examiner Williams at Los Angeles, after due notice thereof had been given so that all interested parties might appear and be heard.

Applicant is financially able to extend its water distribution facilities and render adequate service throughout the area in those portions of Los Angeles County particularly described in the instant application as follows:

> Beginning at the point of intersection of the southerly boundary line of the right of way of the L. A. & S. L. R. R. and the northwesterly corner of Tract 7777 as shown on map recorded in book 115, pages 13 and 14, of map records of the county of Los Angeles, thence southeasterly along said south boundary line of L. A. & S. L. R. R. S. 83° 53′ 35″ E. 729.96′, thence in a curvilinear direction an arc distance of 200.26′ intersecting the prolongation of the northeasterly boundary line of Gates street at a distance of 575′ from the northwesterly boundary line of Tract 7777, thence southeasterly S. 43° 16′ 10″ E. a distance of 638.48′, thence southwesterly S. 46° 43′ 50″ W. a distance of 575′ to a point of intersection of said line and the northwesterly boundary line of Tract 7777, the said boundary line of Tract 7777 being the southeasterly boundary line of Anaheim Telegraph road, thence along said northwesterly boundary line of Tract 7777 1399.52′ in all its various courses back to the point of beginning.

The pipe lines and appurtenant fixtures will be installed in this territory prior to the dedication of the streets and alleys therein to the public, and under such circumstances a county franchise will not be required. No one protested granting the application for extension, and, as there is no other public utility water system now furnishing water within the territory, it appears that the request should be granted.

ORDER.

Belvedere Water Corporation having made application as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require and will require that Belvedere Water Corporation operate a water system for the purpose of supplying water to consumers in the area more particularly described in the opinion preceding this order.

The authority granted herein shall become effective on the date hereof.

Dated at San Francisco, California, this ninth day of January, 1928.

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DECISION NO. 19229.

IN THE MATTER OF THE APPLICATION OF T. R. REX, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A MOTOR TRUCK SERVICE AS A COMMON CARRIER BETWEEN SAN BERNARDINO AND REDLANDS AND OTHER POINTS.

Application No. 14176.

Decided January 10, 1928.

CERTIFICATE—AUTO TRUCK.—T. R. Rex (Rex Transportation Company) authorized to operate automotive freight service between San Bernardino and Fontana and Rialto, Foothill boulevard; between San Bernardino and Colton, Colton road; between San Bernardino and Redlands, state highway; between Redlands and Highlands, Orange street; and between Redlands and Yucaipa, state highway and Yucaipa road.

Phil Jacobson, for Applicant.
Surr and Hellyer, by *H. W. Phipps*, for Atchison, Topeka and Santa Fe Railway Company, Protestant.

BY THE COMMISSION.

OPINION.

T. R. Rex, operating under the name and style of Rex Transportation Company, a freight common carrier, having principal offices at San Bernardino and Redlands, has applied to the Railroad Commission for authority to extend its terminal deliveries to Fontana, Rialto, Colton, Redlands, Highlands, East Highlands and Yucaipa, and to establish local service from San Bernardino and Redlands to such points.

A public hearing was conducted by Examiner Williams at San Bernardino.

Applicant now conducts a freight transportation business between Los Angeles and San Bernardino and Redlands and the other points named, by authority of Decisions Nos. 6902 and 13579. Shipments must originate at or be destined to Los Angeles.

Applicant now alleges that there is a public need for additional service over the routes now served by him from Los Angeles:

Route No. 1—Between San Bernardino and Rialto and Fontana.

Route No. 2—Between San Bernardino and Colton.

Route No. 3—Between San Bernardino and Redlands, Highlands, East Highlands and Yucaipa.

Route No. 4—(By amendment at hearing.) Between Redlands and Highlands, East Highlands and Yucaipa.

To meet this alleged demand, applicant offers daily service, except Sundays and holidays, and at class rates shown in Exhibit "A" attached to the application. Applicant owns seventeen trucks and seven trailers and offers to provide any additional equipment necessary. The deliveries are to be made by the regular trucks transporting Los Angeles shipments, or extra equipment. Special rates are offered for transporting trunks and suit cases.

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Applicant explained that he had made many hauls for which authority is now sought, under the belief that his certificate permitted them, but that, when advised that the certificate only permitted transportation to and from Los Angeles, he filed the application now being considered.

At the hearing, applicant amended his time schedule to omit Sundays and holidays, and also to add Route No. 4 from Redlands to Highlands, East Highlands and Yucaipa, at the same rates as proposed for Route No. 2. It was also stipulated that the rates to be charged apply only to shipments originating at the points other than Los Angeles, and will not affect nor alter the rate structure between all points and Los Angeles.

In his support, applicant produced as witnesses, Leslie I. Harris, manager, San Bernardino department store with a branch at Redlands; G. E. Gunnett, San Bernardino tire dealer; Hunter C. Ferguson, manager, San Bernardino Oil Company, wholesale and retail oils and tires, with a branch at Redlands; L. L. Oldfield, San Bernardino, roofing materials and tiles; R. H. Stockwell, San Bernardino, office equipment and supplies; E. N. Jordan, manager, San Bernardino branch of Hammond Lumber Company; C. L. McWilliams, manager of the San Bernardino branch of the Pacific Pipe and Supply Company of Los Angeles; Alden Olcovich, Redlands, sanitary plumbing and drain pipe business, and Robert Waitman, Redlands, distributor of sewing machines.

These witnesses all testified their businesses need a daily service as proposed, and the individual use was estimated at from a few hundred pounds to several tons monthly; that the service of the Santa Fe Railroad is not fast enough and requires depot delivery and additional trucking, while witnesses need direct delivery to the customer. Only one witness testified that he has used service of the Santa Fe Railroad, except for shipments from the east, and all had used the service of applicant with satisfaction. The volume of shipments to sustain the service proposed, as shown by these witnesses, aggregates about 50 tons monthly, including department store packages to the amount of eight or ten daily, to truck loads of lumber and building material, all requiring direct delivery to consignee or site of construction.

J. D. Inman, manager of applicant at Redlands, testified to daily demands for service to and from San Bernardino, and very frequently between Redlands and Highlands and Yucaipa. A large part of this demand is for transportation to rail lines of citrus fruits from Highlands packing houses, and deciduous fruits from Yucaipa. The witness named many businesses that sought service. He estimated a

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daily tonnage of one and one-half tons in both directions between Redlands and San Bernardino.

Joseph Araizo, manager of applicant at San Bernardino, gave similar testimony as to demands from that point and Colton, Rialto and Fontana. He estimated the tonnage to Fontana at twenty-five tons monthly, and to Highlands ten tons, based on offerings made by shippers.

The application was protested by the Santa Fe Railroad, on the ground that its service is adequate to all points. It was admitted that this transportation is from depot to depot only, and that the hours for receipt and delivery of freight are from 8 a.m. to 4 p.m. Applicant's hours for receipt at terminals are from 5 a.m. to 6 p.m., and free pick-up service is maintained in Colton, San Bernardino and Redlands. Applicant also offers free pick-up at other points after reasonable notice. The Santa Fe, according to the testimony of Harry A. Sugars, division transmaster, maintains daily service between San Bernardino and Rialto and Fontana, leaving at 7.15 a.m. and returning between 5 and 6 p.m. A merchandise car to Colton is also daily, and delivery is begun at 7 a.m. at the car platform. A loop service with a merchandise car leaves San Bernardino daily at 1.30 a.m. and delivers at Highlands at 2.30 a.m., East Highlands at 3 a.m., Redlands at 4.30 a.m., returning from Redlands at 5.30 p.m. Agencies are maintained at all points. These services are available only to those who deliver shipments to the depots before 4 p.m. on the day preceding, and require, in most cases, a truck haul at point of destination.

Applicant proposes delivery to Rialto and Fontana at 8.30 a.m. daily, and return at 11 a.m.; to Colton at 7 a.m. daily, returning at 2.45 p.m., and to Redlands at 3. p.m., returning at 5 a.m. the day following, and from Redlands to Highlands at 7 a.m. and returning at 2.45 p.m. The bulk of the property transported will have additional free pick-up and delivery.

There is almost a parity of rates between applicant and protestant, except on Route No. 3, where the charges are five cents higher than rail. The charges to all other points for the four classes affecting L. C. L. movements are 25 cents, 21 cents, 18 cents and 15 cents per hundred weight for applicant, and 25 cents, 21 cents, 17½ cents and 15 cents for protestant.

After consideration of the entire record, we find that there is a substantial demand on the part of the shipping public for the service proposed, based wholly on the need for direct transportation during business hours, from consignor to consignee. This service protestant does not offer, and the testimony shows that shippers do not use the service of this protestant at all, hence the applicant is not seeking

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business which protestant is now enjoying. Applicant is asking authority to provide interchange of commodities between all points by a method not now in existence, and serving a real need in a rapidly growing area. The application as amended should be granted, and an order accordingly will be entered.

ORDER.

T. R. Rex, operating under the name and style of Rex Transportation Company, having made application to the Railroad Commission for a certificate of public convenience and necessity to establish freight service between San Bernardino and Redlands and to Fontana, Rialto, Colton, Highlands, East Highlands and Yucaipa, a public hearing having been held, the matter having been duly submitted and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment of service as proposed by applicant in his amended application, over and along the following routes:

Between San Bernardino and Fontana and Rialto, Foothill boulevard;

Between San Bernardino and Colton, Colton road;

Between San Bernardino and Redlands, state highway;

Between Redlands and Highlands, Orange street;

Between Redlands and Yucaipa state highway and Yucaipa road; and

It is hereby ordered, that a certificate of public convenience and necessity therefor be and the same hereby is granted, subject to the following conditions:

1. Applicant shall file with this Commission, within a period of not to exceed ten days from date hereof, his written acceptance of the certificate herein granted as an extension and enlargement of his present operative rights, and not as a new or separate right.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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For all other purposes, the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this tenth day of January, 1928.

DECISION No. 19231.

IN THE MATTER OF THE APPLICATION OF FRANK ATKINSON FOR AN ORDER AUTHORIZING HIM TO REROUTE A PORTION OF HIS AUTOMOBILE STAGE SERVICE ALONG SAN PEDRO STREET (PARTLY WITHIN AND PARTLY WITHOUT THE CITY LIMITS OF THE CITY OF LOS ANGELES) AND TO OPERATE SAME AS A SEPARATE STAGE SERVICE.

Application No. 14219.

Decided January 10, 1928.

CERTIFICATE—AUTO STAGE—EXTENSION.—Frank Atkinson authorized to reroute a portion of his auto stage service along San Pedro street partly within and partly without the city of Los Angeles.

EVIDENCE—PRESUMPTION AND BURDEN OF PROOF—AS TO CONVENIENCE AND NECESSITY. While applicant for authorization to extend and reroute stage service did not support the application by testimony of those actually in need of the proposed service, testimony as to the demands by the public, of record with a city board of public utilities, together with applicant's testimony that he was willing to pioneer the field now occupied by him in part, was held sufficient to justify the granting of the certificate.

Kidd, Schell and Delamer, by *H. W. Kidd*, for Applicant.
James Gunn, for Board of Public Utilities, City of Los Angeles, Interested Party.

BY THE COMMISSION.

OPINION.

Frank Atkinson, operating a passenger stage service between portions of the city of Los Angeles and unincorporated territory in the county of Los Angeles, by authority granted by Decisions Nos. 15272, 15454, 15934 and 17366, has made application to the Railroad Commission to reroute his service by adding schedules between the intersection of Broadway and Manchester avenue in the city, and 121st street in the county, over and along San Pedro street.

A public hearing was conducted by Examiner Williams at Los Angeles.

Applicant now operates between Manchester avenue and 121st street by way of both Avalon boulevard and Main street. These streets are parallel to 120th street, one-half mile apart. San Pedro street is parallel to each and midway between. The new route, therefore, provides a service not more than one-fourth of a mile from its patrons. All of the operations of applicant connect with the San Pedro street railway and bus lines of the Los Angeles Railway at Manchester avenue, and Mr. Atkinson testified that 90 per cent of traffic is to and from the railway company services.

Applicant now uses three 21-passenger vehicles in his service, and

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proposes to add another at an approximate cost of $5,000, an investment he testified he is able to make. Thirty-seven loop schedules are maintained daily, except Sundays and holidays, on Avalon boulevard and Main street, and, as amended at the hearing, twenty schedules will be maintained on San Pedro street, operating only between Manchester avenue and 121st street. The fare to be charged is the same as for the other route, six cents. In the application, applicant sought the new routing as a separate certificate, but at the hearing amended his application to make it an addition to his present service and merged with it.

Applicant explained that for more than a year there has been a demand for service along San Pedro street, for a distance of two miles, all within the city limits. Efforts were made by the Board of Public Utilities to induce the Los Angeles Railway to extend its bus line, but were not successful. The board then asked applicant to offer the service in connection with his own. As applicant did not wish to have his operations under different public authorities, he agreed to make the present application, carrying him two and one-half miles to his terminus at 121st street outside the city limits. Applicant testified that San Pedro street and adjacent territory has built up very rapidly, and he believes the schedules proposed will, in time, become profitable. He also testified that establishment of this service would not impair in any way the present loop service, which has been operated for two and one-half years.

James Gunn, chief inspector of the transportation department of the Board of Public Utilities, testified that applicant is making his offer of service on San Pedro street at the instance of that board, and that demands upon the board have been made by residents and property owners, for more than a year. He testified he had investigated this expressed need and found it to be real. The Fremont Improvement Association has been most active in pressing the demand. When the Los Angeles Railway declined to provide service, the board encouraged applicant to provide it.

H. G. Weeks, assistant general manager of the Los Angeles Railway, stated that it had no protest, although its application for this route had once been denied by this Commission (Decisions Nos. 15262 and 15454 on Application No. 11434). He further stated that his company did not believe there was room for two operators in this field.

While applicant did not support the application by testimony of those actually in need of the proposed service, we believe the testimony as to the demands by the public, of record with the Board of Public Utilities, together with applicant's testimony that he is willing to pioneer this field as a public duty, and also because he is already occupying in part this field, is sufficient to justify granting the cer-

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tificate sought for the new route as an enlargement and addition to his present service, and without curtailment of this present service. An order accordingly will be entered.

ORDER.

Frank Atkinson having made application to the Railroad Commission for authority to reroute a portion of his automobile stage service over and along San Pedro street, a public hearing having been held, and the matter having been duly submitted and now being ready for decision;

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment by applicant of the service proposed herein over and along the following route:

From applicant's terminal on 121st street, immediately west of San Pedro street, thence north over and along San Pedro street to Manchester avenue; thence westerly over and along Manchester avenue to applicant's terminal near the intersection of Broadway and Manchester avenue, returning over exactly the same route; and

It is hereby ordered, that a certificate of public convenience and necessity therefor be and the same hereby is granted, subject to the following conditions:

1. Applicant shall file with this Commission, within a period of not to exceed ten days from date hereof, his written acceptance of the certificate herein granted as an extension and enlargement of his present operative rights, and not as a new or separate right.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred or assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this tenth day of January, 1928.

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Decision No. 19232.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE AND SALE OF CAPITAL STOCK OF THE PAR VALUE OF THREE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS.

Application No. 14121.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER PERMITTING IT TO ISSUE THREE HUNDRED THOUSAND DOLLARS OF EQUIPMENT TRUST CERTIFICATES.

Application No. 14122.

Decided January 10, 1928.

SECURITY ISSUES—USE OF PROCEEDS.—Pickwick Stages System authorized to use not exceeding $57,589.69 of proceeds obtained from the sale of stock and certificates to finance cost of acquiring equipment.

SECURITY ISSUES—USE OF PROCEEDS—IN GENERAL.—An automotive transportation company will not be authorized to use an excessive amount of proceeds from the sale of securities to pay for equipment constructed by a parent company, as the Commission does not look with favor on the practice of permitting a construction company to profit at the expense of a public utility when the construction company controls the public utility or is owned or controlled by the same interests which own or control the utility.

SECURITY ISSUES—PURPOSE—ACQUISITION OF EQUIPMENT.—After authorization to use a specified amount of proceeds obtained from the sale of securities to finance the cost of automotive equipment, if the carrier pays more therefor to a parent construction corporation, such excess must be obtained from some source other than the issue of securities and must be charged to surplus account and not to plant and equipment or operating expense accounts.

BY THE COMMISSION.

FIRST SUPPLEMENTAL OPINION.

The Railroad Commission, by Decision No. 19105, dated December 6, 1927, in the above entitled matters, authorized Pickwick Stages System to issue and sell at not less than par, $325,000 of its common capital stock and to execute and enter into an equipment trust agreement and a lease agreement and to assume or guarantee the payment of not exceeding $300,000 of 6½ per cent serial equipment trust certificates, the issue and sale of which certificates, at not less than 95 per cent of face value, was authorized.

The order of the Commission provided that the proceeds from the sale of the stock and certificates be deposited in a special bank account to be used by the company for the purpose of financing the construction cost of equipment but only upon being authorized, by supplemental orders, to do so. In this connection, Condition No. 1 of the order reads as follows:

> 1. To obtain supplemental orders authorizing the use of proceeds from the sale of the stock and certificates applicant shall first file with the Commission supplemental petitions containing certified statements showing in detail the actual cost of constructing the equipment to be financed through the use of said proceeds, and justify said cost.

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On December 14, 1927, applicant filed a supplemental petition in the above entitled matters asking permission to use $34 900 of the proceeds from the sale of the stock and $31,350 from the sale of the certificates to finance in part the cost of the following equipment:

Four 27-passenger aisle-parlor sedan intercity type automobile stages bearing the names "Carat," "Scarab," "Tiger Eye" and "Louisiana" of the value of $13,500 each	$54,000 00
One 26-passenger parlor sedan intercity type automobile stage bearing the name "Wisconsin" of the value of	12,500 00
Total	$66,500 00

It appears that the equipment has been constructed by The Pickwick Corporation, a company which owns all of the outstanding stock of Pickwick Stages System, applicant herein. In support of the request contained in the supplemental petition applicant has filed, as Exhibit "A," a certified statement showing in detail the costs to The Pickwick Corporation of manufacturing the five units of equipment now proposed to be purchased by applicant.

These costs, compared with the purchase prices proposed to be paid by applicant, are as follows:

Equipment	Reported cost to The Pickwick Corporation	Proposed purchase price by applicant	Difference
27-passenger stages:			
Carat	$11,732 19	$13,500 00	$1,767 81
Scarab	11,898 93	13,500 00	1,601 07
Tiger Eye	11,694 92	13,500 00	1,805 08
Louisiana	11,755 83	13,500 00	1,744 17
Subtotal	$47,081 87	$54,000 00	$6,918 13
26-passenger stage:			
Wisconsin	10,507 82	12,500 00	1,992 18
Total	$57,589 69	$66,500 00	$8,910 31

The prices proposed to be paid by Pickwick Stages System are approximately 15 per cent higher than the manufacturing costs reported in the supplemental petition. As we have indicated in Decision No. 19105, we do not look with favor on the practice of permitting a construction company to profit at the expense of a public utility when the construction company controls the public utility or is owned or controlled by the same interests which own or control the utility. Further, Condition 1, of the order in Decision No. 19105, quoted above, provides that before the company can obtain supplemental orders permitting the withdrawal of stock and certificate proceeds to finance the cost of equipment, it shall, among other things, justify said cost, and we do not believe that sufficient showing has been made in this supplemental petition in justification of the use of the entire $66,500. For these reasons we will authorize the use of only $57,589.69 of the proceeds from the sale of the stock and certificates to finance the cost of

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the five stages referred to in this opinion. In the event Pickwick Stages System pays The Pickwick Corporation more than $57,589.69 for the equipment, such excess must be provided from some source other than the issue of stock or certificates or other form of indebtedness and must be charged to applicant's surplus account and not to its plant and equipment or operating expense accounts.

SECOND SUPPLEMENTAL ORDER.

Pickwick Stages System having filed a supplemental petition in the above entitled matters for permission to use $66,250 of proceeds obtained from the sale of the stock and certificates to be issued by Decision No. 19105, dated December 6, 1927, and the Commission being of the opinion that the money, property or labor to be procured or paid for through the use of not exceeding $57,589.69 of such proceeds is reasonably required for the purpose specified herein, and that the expenditure of not exceeding $57,589.69 is not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that Pickwick Stages System be and it hereby is authorized to use not exceeding $57,589.69 of the proceeds obtained through the issue and sale of the stock and certificates authorized by Decision No. 19105, dated December 6, 1927, for the purpose of financing the cost of acquiring the five automobile stages referred to in the foregoing opinion, namely: the "Carat," "Scarab," "Tiger Eye," "Louisiana" and "Wisconsin," provided that in the event applicant pays more than $57,589.69 for said stages it shall charge any excess over $57,589.69 to its corporate surplus account.

It is hereby further ordered, that the provision of the order in Decision No. 19105, dated December 6, 1927, reading:

> *It is hereby further ordered*, that Pickwick Stages System shall deposit the proceeds from the sale of the $325,000 of stock and the $300,000 of certificates in a special bank account, and use such proceeds only upon being authorized to do so by supplemental orders in these proceedings, for the purpose of financing the construction cost of the equipment referred to in the foregoing opinion or for such other purposes as the Commission might authorize.

be and the same is hereby amended so as to read:

It is hereby further ordered, that Pickwick Stages System shall deposit the proceeds from the sale of the $325,000 of stock and the $300,000 of certificates in a special bank account, and use such proceeds or said stock or certificates only upon being authorized to do so by supplemental orders in these proceedings, for the purpose of financing the construction cost of the equipment referred to in the foregoing opinion, or for such other purposes as the Commission might authorize.

It is hereby further ordered, that Pickwick Stages System shall keep such record of the disposition of the proceeds herein authorized as will enable it to file, on or before the twenty-fifth day of each month, a

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verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

It is hereby further ordered, that Pickwick Stages System shall file a verified copy of the journal entry or entries by which it records on its books of account the purchase of the five automobile stages referred to herein, such copy to be filed within thirty days after such purchase.

It is hereby further ordered, that the order in Decision No. 19105, dated December 6, 1927, shall remain in full force and effect, except as modified by this second supplemental order.

Dated at San Francisco, California, this tenth day of January, 1928.

DECISION No. 19233.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF ITS COMMON STOCK OF THE PAR VALUE OF TWO MILLION DOLLARS.

Application No. 14263.

Decided January 10, 1928.

SECURITY ISSUES—STOCK.—San Diego Consolidated Gas and Electric Company authorized to issue and sell on or before December 31, 1928, at not less than par $2,000,000 of its common capital stock and to expend not exceeding $500,000 of proceeds obtained from the sale thereof.

SECURITY ISSUES—USE OF PROCEEDS—IN GENERAL.—When no detailed statement of a utility's proposed construction expenditures has been filed, the Commission will authorize only the expenditure of a limited amount of proceeds from the sale of stock authorized, and such authorization is not to be construed as an approval of the total reported uncapitalized expenditures.

INTEREST—DURING CONSTRUCTION.—The computing of interest during construction at the rate of 7 per cent per annum being unwarranted under existing conditions, an order authorizing the expenditure of a specified amount of proceeds obtained from the sale of securities to pay indebtedness should not be considered as an approval of this charge, or of some other overhead or supervision construction costs, in any proceeding.

Chickering and Gregory, by *Allen L. Chickering*, for Applicant.

BY THE COMMISSION.

OPINION.

In this application San Diego Consolidated Gas and Electric Company asks permission to issue and sell $2,000,000 of its common capital stock.

As of October 31, 1927, applicant reports outstanding $13,868,000 of bonds and $11,325,000 of stock, consisting of $6,292,500 of 7 per cent cumulative preferred stock and $5,032,500 of common stock. It appears that substantially all of the common stock is owned by Standard Gas and Electric Company and it is reported that should this application be granted, the additional $2,000,000 of common stock now proposed to be issued will be taken by the present common stockholders, at par.

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The company asks permission to use the proceeds from the sale of its stock to pay indebtedness incurred for construction purposes, to reimburse its treasury and to finance the cost of estimated construction expenditures. In support of its request it reports in its application that its construction expenditures prior to March 31, 1921, had been capitalized and that from that date to October 31, 1927, it expended for additions and betterments the sum of $16,747,421.93, as shown in Exhibit "D," and $550,000 in retiring an issue of five-year 6 per cent notes, making total expenditures of $17,297,421.95. From this amount there is deducted $3,026,332.08, being the amount received from earnings, reserves and surplus, invested in property, and $11,555,360.50, being the proceeds from the sale of stock and bonds heretofore authorized to be issued, leaving a balance of $2,715,729.37 which applicant alleges has not been obtained through the issue of stock or bonds and against which it might properly issue the $2,000,000 of common stock. In addition to the uncapitalized expenditures it reports its estimated expenditures for November and December, 1927, at $450,000.

The company reports that the uncapitalized construction expenditures have been financed in part by borrowing money on its short term 5 per cent note in favor of Bank of Italy amounting to $75,000, in part by borrowing money on open account amounting to $479,444, in part through consumers' deposits and deposits for service extensions amounting to $307,094 and in part by using surplus earnings and moneys represented by reserves. Although it is asking permission to issue $2,000,000 of stock it reports that it intends to sell, at this time, only $500,000 thereof and to use the proceeds to pay the $75,000 note due Bank of Italy and to pay in part its open account indebtedness. The remaining $1,500,000 of stock it proposes to dispose of during 1928 to meet construction expenditures during that year.

While the company has reported that during 1928 it estimates its construction expenditures at $4,919,045 it has not submitted any detail of such expenditures. It is of record that the company has undertaken the enlargement of its electric generating station B by the installation of a 25,000 kilowatt turbine and auxiliaries at an estimated cost of $2,100,000.

In view of the fact that no detailed statement of the company's proposed 1928 construction expenditures was filed, the order herein will authorize only the expenditure of $500,000 of the proceeds which applicant will realize from the sale of the stock. Such an authorization is not to be construed as an approval of the total reported uncapitalized expenditures referred to herein but an approval only to the extent of $500,000. It might be added that the testimony herein shows that applicant is computing interest during construction at the rate

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of 7 per cent per annum. This practice, we feel, is unwarranted under existing financial conditions and the order herein should not be considered as an approval of this charge, or of some other overhead or supervision construction costs, either for this or any rate fixing or other proceeding.

ORDER.

San Diego Consolidated Gas and Electric Company having applied to the Railroad Commission for permission to issue $2,000,000 of stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant for construction purposes, that the company should at this time be authorized to expend $500,000 obtained from the sale of the stock to pay indebtedness and that such expenditures are not in whole or in part reasonably chargeable to operating expenses or to income, and that the expenditure of $1,500,000 of the proceeds should not be made until hereafter authorized in subsequent orders herein;

It is hereby ordered, that San Diego Consolidated Gas and Electric Company be and it hereby is authorized to issue and sell, on or before December 31, 1928, at not less than par, $2,000,000 of its common capital stock and to expend not exceeding $500,000 of the proceeds for the purpose of paying the outstanding note for $75,000 in favor of the Bank of Italy and of paying in part the outstanding open account indebtedness referred to herein and through such payments permanently finance, in part, construction expenditures made prior to October 31, 1927.

It is hereby further ordered, that San Diego Consolidated Gas and Electric Company shall not expend any proceeds from the sale of the $2,000,000 of stock herein authorized to be issued in excess of said $500,000 until authorized to do so by subsequent orders in this proceeding.

It is hereby further ordered, that the authority herein granted shall become effective upon the date hereof and, further, that applicant shall keep such record of the issue and sale of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this tenth day of January, 1928.

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Decision No. 19235.

BAKERSFIELD AND LOS ANGELES FAST FREIGHT COMPANY, A CORPORATION, AND LOS ANGELES AND WEST SIDE TRANSPORTATION COMPANY, A CORPORATION,

vs.

NICK GOMBOS, P. G. CLARK, L. A. WAGNER, THE RIDGE ROUTE SERVICE COMPANY, A COPARTNERSHIP; GOLDEN WEST FILM TRANSPORTATION COMPANY.

Case No. 2395.

Decided January 10, 1928.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION.—Complaint of Bakersfield and Los Angeles Fast Freight against Nick Gombos and others alleging unlawful operation dismissed.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION.—A complaint alleging unlawful operation in the carrying of unauthorized commodities was dismissed where the evidence showed that employees of the certificate holder agreed between themselves to transport the merchandise, they and not the certificate holder profiting by such operation.

Hugh Gordon, for Complainants.
Richard T. Eddy, for Defendants.

BY THE COMMISSION.

OPINION.

The complainants herein are transportation companies and common carriers of freight by automobile trucks operating under proper authorization of this Commission between Bakersfield and Los Angeles, and between points in the West Side oil fields and Los Angeles.

By virtue of Decision No. 15127 on Application No. 10720 defendant Nick Gombos was heretofore granted a certificate of public convenience and necessity to operate an automobile truck service as a common carrier exclusively of motion picture films together with posters, lobby displays and general advertising matter used in connection therewith between Los Angeles on the one hand and Bakersfield, Taft, Maricopa and Fellows on the other hand, but with no local service between these respective communities.

Defendants P. G. Clark and L. A. Wagner are, or have been, associated with Gombos in the transportation business.

Defendant Ridge Route Service Company is a partnership composed of Gombos, Clark and Wagner for the purpose of buying and selling merchandise and transporting same from the point of purchase to the point of sale.

Defendant Golden West Film Transportation Company is alleged to be an organization the nature of which is not disclosed in the complaint but presumed to be engaged in the transportation business with defendant Gombos.

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It is alleged in the complaint that Gombos either operating as an individual or in conjunction with defendants Clark and Wagner as partners under the firm name of Ridge Route Service Company has engaged in the transportation of general merchandise other than that specified in his certificate, between the above mentioned points, and that he has assigned, leased or transferred to others the rights acquired under such certificate.

A public hearing was held before Examiner Gannon at Los Angeles, at which time the matter was submitted and is now ready for decision.

In support of the allegations set forth in the complaint, complainant called three witnesses, viz: Defendants Clark and Wagner and one J. T. Robertson, manager of Bakersfield and Los Angeles Fast Freight Company and Los Angeles and West Side Transportation Company. The testimony of Clark was taken by way of deposition, inasmuch as he was obliged to leave the state prior to the hearing. This witness testified that he, together with defendants Gombos and Wagner, formed a partnership under the name of Ridge Route Service Company, the purpose of which was to buy and sell merchandise, the orders being taken chiefly in Bakersfield and filled in Los Angeles, and then transported by their trucks and delivered at store doors. This witness took the orders and stated that as a result of his efforts the company carried out of Los Angeles on the first day of operation about four tons of merchandise destined for Bakersfield. Clark further testified that in case customers did not choose to buy from Ridge Route Service Company but desired to purchase goods from their own dealers on open book accounts, the defendant Clark would acquiesce in such arrangement picking up the merchandise and charging a reasonable rate for its delivery. He enumerated a dozen or more customers served in this manner over a period of approximately three months. Witness stated he had asked defendant Gombos, who was apparently the financial guiding spirit of the enterprise, whether the practice thus indulged of picking up miscellaneous freight and transporting same for compensation was not dangerous in view of the limitations of their certificate, but Gombos gave him every assurance that there would be no interference. Witness related that he finally withdrew from the partnership because it was unprofitable for him.

J. T. Robertson, manager of Bakersfield and Los Angeles Fast Freight Company, and Los Angeles and West Side Transportation Company, complainants in this action, testified that he had seen the trucks of Ridge Route Service Company and of Golden West Film Transportation Company making deliveries of groceries and other merchandise on the Ridge Route and in and about Bakersfield as often as three or four times a week during the period from January to April, 1927. However, the witness could not testify that such deliveries were

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not of goods bought by Gombos and sold by him in the usual course of his business operating as Ridge Route Service Company. He stated that the transportation rates offered by defendant Gombos and Ridge Route Service Company were more attractive than those of complainant companies, as a result of which considerable tonnage was temporarily lost by them.

Defendant Wagner testified that he was employed by Gombos on a salary and that he solicited orders while driving his truck. His testimony further shows that he operated under the direction of defendant Clark and in the same manner as was testified to by Clark. Witness stated defendant Gombos had no knowledge of such practice and in fact had repeatedly instructed the witness not to engage in such operations under penalty of dismissal. The customer usually paid the freight charges and the money so collected was divided between defendant Clark and the witness. According to this witness, Clark approached him with a proposition to make money on the side and proposed the plan later put into operation. Gombos knew nothing whatever of freight hauled on the film truck and received no financial benefit from such business. This witness testified that the truck load of four tons of merchandise out of Los Angeles destined to Bakersfield, and referred to in the testimony of Clark, was driven by Gombos himself and consisted only of property owned by Ridge Route Service Company.

Defendants called two witnesses, William H. Neill and Nick Gombos. Neill acted in the capacity of bookkeeper for Gombos and was familiar also with the business of Ridge Route Service Company and Golden West Film Transportation Company, both defendants herein. His testimony was that the books of these companies contained no record whatsoever of transportation service or of any money received for such service.

Defendant Gombos testified that he had never handled on his film trucks any freight other than such as was permitted under his certificate from this Commission, and that his drivers had been repeatedly warned by him to receive no goods for shipment save and except in strict accord with the terms and conditions of his certificate. Moreover, he stated that if any of his drivers violated such instructions they did so without his knowledge. As to the allegation of the complainants that witness had assigned, sold, leased or transferred to others the rights acquired under his certificate from this Commission, Gombos denied such allegation and stated that he was the sole owner of such rights. He had no knowledge of the alleged violation of certificate until served with this complaint, whereupon he discontinued entirely the Ridge Route service.

A careful consideration of the evidence herein adduced fails to disclose any substantial proof of the allegations set forth in the complaint.

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Clark, called as a witness by complainants, and a defendant in this proceeding, was formerly in the employ of Gombos and by his testimony admits having transported general merchandise for compensation in the Gombos trucks. He stated that Gombos was a beneficiary of such practice. Witness Wagner, also a defendant herein and associated with Gombos at present, testified that he had hauled merchandise under the direction of Clark and in the manner testified to by that witness, but that all moneys received as freight charges were split between Wagner and Clark and that Gombos had no knowledge of freight hauled on the film trucks other than such as was permitted under the Commission's order. Witness Robertson, manager of the two complainant companies, testified that he had seen the loaded trucks of Ridge Route Service Company in and around Bakersfield, but did not see them actually making deliveries and hence was unable to say whether or not they were generally transporting freight for compensation.

The testimony of defendant Gombos is directly at variance with that of witnesses Clark, Wagner and Robertson and we are inclined to believe that at least as much weight should be given to the tetsimony of this witness as might be accorded to the testimony of witnesses Clark and Wagner.

The record is quite clear that Clark and Wagner agreed between themselves to transport general merchandise on the Gombos trucks and that they and not Gombos were the ones to profit by such operation. In fact the testimony of Gombos is that he repeatedly cautioned all his drivers against any temptation to carry freight on the film trucks, except such as was specified in the order granting him a certificate. While the Commission does not feel that the evidence in this case warrants a revocation of the certificate heretofore granted to defendant Gombos, it does avail itself of this opportunity to caution said Gombos against further laxity in the enforcement of the terms and conditions of such certificate either by himself or on the part of his employees.

An order will be made dismissing the complaint.

ORDER.

A public hearing having been held in the above entitled case and it appearing to the Commission from the findings set out in the foregoing opinion that said complaint is not well founded and should be dismissed;

It is hereby ordered, by the Railroad Commission of the State of California, that the complaint herein be and the same is hereby dismissed.

Dated at San Francisco, California, this tenth day of January, 1928.

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DECISION No. 19236.

STEVE BERTI

vs.

D. ROVAI.

Case No. 2397.

Decided January 10, 1928.

REPARATION—UNAUTHORIZED INCREASE.—D. Rovai, operating a water utility in Wildwood, Humboldt County, ordered to refund to Steve Berti certain excessive charges.

REPARATION—CIRCUMSTANCES DETERMINING RIGHT—UNAUTHORIZED INCREASE.—A water utility having charged a consumer a rate in excess of the schedule of rates on file with the Commission was ordered to refund all amounts collected in excess of the established rates.

Steve Berti, in propria persona.
D. Rovai, in propria persona.

BY THE COMMISSION.

OPINION.

This complaint was filed by Steve Berti, a consumer, receiving water from a small public utility owned and operated by D. Rovai and supplying water to the residents of Wildwood, in Humboldt County. The complainant alleges in effect that for a long time defendant has been charging him a flat rate of $4 per month for water service to his premises, which rate is in excess of the schedule authorized by the Railroad Commission; that complainant has made repeated requests that he be given the residential flat rate of $1.50 per month, or that a meter be installed and service charged for at the meter rate as established by the Commission, but that defendant has refused, and still refuses, to comply with his request. No answer to the complaint was filed by the defendant.

A public hearing in this matter was held before Examiner Gannon at Rio Dell, Humboldt County, after all interested parties had been duly notified and given an opportunity to appear and be heard.

According to the evidence, Berti owns a two-story building which is occupied on the first floor by a grocery store, a cigar stand and a pool room, and his own living quarters in the rear; on the second floor there are eleven small rooms which only occasionally have been used to accommodate lodgers. The premises in no sense of the word can be considered as a hotel or rooming house under such classification in the existing rate schedule. The water facilities consist of five water taps on the ground floor, supplying the living quarters only, and a flush toilet and sink on the second floor. The grocery store, pool room and cigar stand have no water taps.

Berti testified that he has operated the store on the premises since 1919 and that the charge for water service has always been $2 per

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month for his premises until December, 1925, when the Commission fixed a new schedule of rates to be charged for the water service rendered by Rovai's water system. Shortly thereafter, Rovai increased the charges to $4 per month and Berti immediately requested that a meter be installed on the service and the charges be made at the established meter rate, the monthly minimum charge being $1.50. Defendant refused to install the meter and, after a considerable period of dispute over the matter, in July and September of 1927 Berti deposited with the Commission for adjustment the full amount of the bills in dispute for the months of July, August and September, in accordance with defendant's rules and regulations on file with the Commission. In spite of the fact that said rules precluded the shutting off of service after deposit with the Commission, Rovai nevertheless discontinued service to Berti's premises and he was without any water service whatsoever from September 14 to September 29, 1927, when the service was resumed upon direct telegraphic order of the Railroad Commission. Obviously, this arbitrary and improper action on the part of defendant caused complainant a great deal of inconvenience and discomfort.

Defendant Rovai contended that he considered the charge of $4 per month to be a reasonable one and also claimed that he could not install a meter on the service pipe now supplying the premises without first constructing two miles of new pipe line to connect with the Berti premises. The fact that this property is now and for many years last past has been receiving water from defendant's system clearly indicates the absurdity of this contention and furthermore plainly shows that defendant has not acted in good faith in the matter. No such rate as charged complainant and applicable to this property is to be found in the rate schedule and it is clear from the evidence that the charges made are improper. No explanation was made by defendant of his repeated refusals to resume service to complainant after several written requests for such reconnection had been made informally by the Commission. The evidence shows that such refusals have been wholly unjustified and in deliberate violation of his own rules and regulations, and in contemptuous defiance of this Commission. It must be distinctly understood by defendant that this Commission will not tolerate further inconsiderate and unreasonable treatment of consumers receiving water from his system, and, should such acts continue in the future, defendant may rest assured that the Commission will invoke its punitive powers to the fullest extent.

A consideration of the evidence indicates that since the first day of January, 1926, at which time the present schedule of rates was made effective by the Commission, the proper flat rate charge for water service to complainant's premises was, and still is, $1.50 per month.

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except for the month of September, 1927, when a fifteen-day service only was given and for which the sum of seventy-five cents only is properly chargeable. All amounts in excess of the above, billed complainant for service subsequent to January 1, 1926, are improper and not in conformity with the established rates and therefore should be refunded.

Defendant's records are incomplete and do not show the full amounts either billed or collected from Berti since January 1, 1926. Complainant was unable to supply receipts for the full period, although there was no question that any of the bills had been unpaid. It is of evidence, however, that, since the rate was increased to $4 by defendant, complainant had paid all such amounts under protest until he deposited with the Commission for adjustment on July 22d, September 22d, and September 26th a total of $11.30, covering the amounts claimed due by defendant for the months of July, August and September, 1927.

The testimony shows that Berti has been charged and has paid $24 for water service for the six months' period commencing July 1, 1926, and $35.30 for the period from January 1 to and including the month of September, 1927; whereas, the proper amounts should have been $9 and $12.75, respectively, making a total overcharge of $37.55, covering said period from July 1, 1926, to and including September 30, 1927. Of the above overcharge, $11.30 has been deposited with the Commission which will be returned by the secretary of this Commission to complainant, leaving $26.25, which defendant shall refund to complainant for said period, provided, however, that in the event the water bills for the months of October, November and December have not been billed and collected, the total amount for said months at the rate of $1.50 per month may be deducted from the above amount.

To avoid future difficulties, defendant shall hereafter designate on all receipts given his consumers the month or other period covered by such receipt.

The complainant at the hearing has asked that a meter be installed upon his premises, and as this request has not as yet been complied with and as measured service should avoid any future controversy over the amount of water actually used, defendant shall proceed without delay to install a meter in good working order on the service connection supplying the Berti premises.

ORDER.

Complaint as above entitled having been made by Steve Berti against D. Rovai, owner and operator of a public utility supplying water to consumers in the town of Wildwood, in Humboldt County, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

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It is hereby ordered, as follows:

1. That D. Rovai be and he is hereby ordered and directed to refund to Steve Berti, within thirty days from the date of this order, the sum of $26.25, covering overcharges for water service paid by said Steve Berti during the period from July 1, 1926, to and including September 30, 1927, provided, however, that in the event no collections have been made for service rendered said Berti for all or any of the months of October, November and December, 1927, deduction from said refund at the rate of $1.50 per each such month may be made.

2. That D. Rovai shall notify this Commission in writing within ten days of the date said refund shall have been made and the amount thereof.

3. That D. Rovai be and he is hereby ordered and directed to install within sixty days from the date of this order, on the service connection supplying the premises of Steve Berti, a standard water meter in good and proper working order and to notify this Commission in writing within ten days from the date of installation thereof that said meter has been so installed.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this tenth day of January, 1928.

DECISION NO. 19242.

IN THE MATTER OF THE APPLICATION OF STOCKTON AND MOKELUMNE CANAL COMPANY, A CORPORATION, FOR AN ORDER ABROGATING CERTAIN CONTRCTS WITH CONSUMERS, AUTHORIZING SAID CORPORATION TO TERMINATE SERVICE AS A PUBLIC UTILITY AND AUTHORIZING THE SALE BY SAID CORPORATION OF ITS ASSETS TO THE WOODBRIDGE IRRIGATION DISTRICT.

Application No. 14094.
Decided January 11, 1928.

TRANSFER—IRRIGATION UTILITY.—Stockton and Mokelumne Canal Company authorized to transfer to Woodbridge Irrigation District for the sum of $250,000 its irrigation system serving the territory lying between Lodi, Woodbridge and Stockton in San Joaquin County.

CONSOLIDATION, MERGER AND SALE—CONDITIONS UPON WHICH AUTHORIZED.—The transfer of an irrigation system was authorized on the condition that the purchasing irrigation district file a resolution agreeing to admit within the district boundaries all consumers or land owners who at any time in the past had used water from the system, and who were at the time of transfer excluded from the district boundaries, provided that proper application be made within a specified time.

CONSOLIDATION, MERGER AND SALE—ABROGATION OF CONTRACTS.—In an application to transfer a water system to an irrigation district and to abrogate certain contracts of consumers, where the contract holders have agreed to relinquish their rights in order to expedite the transfer, with the exception of one, and steps are being taken for the making of a new contract between that consumer and the district, it is unnecessary to determine whether the contracts should be abrogated.

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Levinsky and Jones, by *Gilbert L. Jones*, for Applicant.
A. L. Cowell, for Woodbridge Irrigation District.
U. S. Webb, Attorney General, by *T. H. Christensen*, Deputy Attorney General, for the Department of Institutions of the State of California.
George T. McNoble, for Certain of the Boyce Heirs.
WHITSELL, *Commissioner*.

OPINION.

In this proceeding, Stockton and Mokelumne Canal Company, a corporation, serving water for irrigation purposes in the territory lying between Lodi, Woodbridge and Stockton, in San Joaquin County, asks for an order abrogating certain contracts with its consumers, to be relieved of its public utility obligations and for authority to transfer its properties, for a consideration of $250,000, to the Woodbridge Irrigation District, which joins in the application.

A public hearing in this matter was held in the city of Stockton after all interested parties were duly notified and given an opportunity to appear and be heard.

The Stockton and Mokelumne Canal Company was organized in 1898 and incorporated in 1902, and has been in the business of distributing water for irrigation purposes as a public utility continuously since 1899. The company owns certain water rights in the Mokelumne River, the waters of which are diverted by means of a concrete dam located near the town of Woodbridge and distributed by gravity through approximately seventy-one miles of canals owned by the company.

On April 17, 1926, this company filed with the Commission Application No. 12764, wherein authority was asked either to discontinue further public utility service or for permission to establish increased rates which would yield the company a net return of 8 per cent upon a value of $209,115, which amount represents the appraisement of the physical properties of the system, exclusive of water rights, as reported by the engineer for the Woodbridge Irrigation District as of 1924. A hearing was held in Application No. 12764; the matter, however, was not submitted, pending the outcome of negotiations then in progress for the sale of the system to the above district. By stipulation entered into between all interested parties in the instant proceeding, the record of said Application No. 12764 may be considered a part of the evidence in this matter.

The evidence shows that this utility has been struggling along for many years at a constantly increasing financial loss; that no dividends have ever been paid upon any of the stock, which has frequently been subject to the levying of assessments to make up incurred deficits; that the number of consumers and the acres irrigated have constantly decreased until at the present time the revenues are insufficient to meet the necessary operating costs. It furthermore appears that there is

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little or no prospect of this company obtaining any relief in the future from the adverse conditions now existing throughout the area served.

The Woodbridge Irrigation District was duly and legally organized as such on May 8, 1924, under the laws of the State of California and at present comprises approximately fourteen thousand acres of irrigable lands, a large portion of which lies within the service area of this utility. Arrangements have been made by and between this district and the company whereby the district will acquire all of the properties, interests and water rights of the canal company for the consideration of $250,000.

There was no protest of any kind made at the hearing against the sale of this property to the district and, as the evidence shows that further operation of this system under the present conditions is impracticable from a financial standpoint and that under the irrigation district plan the waters may be preserved to the people of the territory served and the area adjacent thereto at a reasonable cost, it appears that the transfer should be granted. There are, however, at the present time a certain number of consumers and also a considerable amount of acreage which has at some time in the past received water for irrigation purposes and which are not within the exterior boundaries of the district as at present constituted. The territory now embraced within the district was determined after more than a year's thorough and complete canvassing of the entire area capable of being served by this utility. All of these consumers and landowners under the system now outside of the district were given every opportunity to bring their lands within the boundaries thereof. The district has stipulated in this proceeding that it is still ready and willing to permit these present and past consumers of the utility, who are not now within the district, to be included therein, provided proper application therefor is made within a reasonable time. It should be pointed out at this time, perhaps, that one of the chief difficulties in bringing into the district a larger portion of the territory served by the utility is the fact that the water table is very close to the surface of the ground throughout this area, resulting in a very large number of landowners and consumers preferring to obtain their water supply from wells. As part of the conditions of the transfer, the Commission will make proper provision for those present and former consumers of this utility now outside the district to apply for inclusion, should they so desire.

As heretofore stated, this application requests the abrogation of contracts existing between the utility and certain of its consumers. All of these contract holders, with the exception of the California State Hospital for the Insane, have agreed to relinquish their rights in order that this transfer may be expedited. The State Hospital for

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the Insane, through the Attorney General, declined to enter into such an agreement, but steps are now being taken for the making of a new contract upon more satisfactory terms to the irrigation district. In view of the foregoing, it becomes unnecessary for us to determine whether these contracts should be abrogated.

It appears to us that the public interests would best be served by the granting of this application. An order will be entered accordingly.

ORDER.

Stockton and Mokelumne Canal Company, a corporation, having made application for an order for the termination of its service as a public utility and for the sale of its properties to the Woodbridge Irrigation District, which joins in the application, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully informed in the matter;

It is hereby ordered, that Stockton and Mokelumne Canal Company, a corporation, be and it is hereby authorized to transfer to the Woodbridge Irrigation District for the sum of $250,000 its irrigation system, water rights, lands, rights of way, canals and so forth, as are more particularly described in the application herein and the exhibits attached thereto and which are hereby referred to and made a part of the order herein by reference, and thereupon stand relieved of all public utility obligations and liabilities in connection therewith, subject to the following terms and conditions, and not otherwise:

1. The authority herein granted shall apply only to such transfer as shall have been completed on or before the first day of June, 1928, and a certified copy of the final instrument of conveyance shall be filed with this Commission within ten days from the date on which it is executed.

2. Within ten days from the date on which Stockton and Mokelumne Canal Company actually relinquishes control and possession of the properties herein authorized to be transferred, it shall file a certified statement with this Commission indicating the date upon which such control and possession were relinquished.

3. Within fifteen days from the date of this order, Woodbridge Irrigation District shall file with this Commission a duly authorized and adopted resolution, regularly passed by the Board of Directors of the said Woodbridge Irrigation District, wherein it agrees to admit within its district boundaries all present consumers, or consumers or landowners who at any time in the past have used water for irrigation purposes from the system of the Stockton and Mokelumne Canal Company and who are now excluded from the boundaries of said irrigation

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district, provided said consumers make proper application therefor to said district on or before the first day of May, 1928.

4. Within thirty days from the date of this order, applicant, Stockton and Mokelumne Canal Company, shall serve notice by mail upon all of its consumers, present and former, advising each of them of their right to come within the district as herein provided.

5. Within sixty days from the date of this order, applicant, Stockton and Mokelumne Canal Company, shall file with this Commission an affidavit showing that condition number 4 of this order has been complied with.

The authority herein granted shall become effective upon the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eleventh day of January, 1928.

DECISION No. 19256.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA TRACTION COMPANY, A CORPORATION, FOR LEAVE TO ABANDON SERVICE OVER A PART OR PORTION OF ITS SYSTEM, TO WIT, SUNNYSIDE LINE.

Application No. 14159.

Decided January 12, 1928.

SERVICE—STREET RAILWAY—ABANDONMENT.—Application of Central California Traction Company operating a street railway system in Stockton and vicinity, to abandon operation of its "Sunnyside line" denied.

SERVICE—ABANDONMENT—REASONS FOR—OPERATION AT A LOSS.—"It has never been the policy of this Commission to permit street railway companies to select for operation only the income producing portions of their lines and abandon those portions which, because of their distance from the center of population or because of other reasons, are not, in themselves, self-supporting."

SERVICE—PARTICULAR UTILITIES—STREET RAILWAYS.—In accepting franchises which show that a particular line was intended to be a part of a comprehensive system of street railway transportation, a carrier obligates itself to furnish service to the community as a whole, and it is almost a universal condition that street railway companies in furnishing such community service expect to, and do, operate nonpaying ends of lines.

SERVICE—ABANDONMENT—REASONS FOR—IN GENERAL.—The fact that a street railway has chosen to divest itself by lease of the better paying lines, retaining an unremunerative portion of the system, is no adequate reason that the portion of the public who depend on the unpaying end for service should suffer by the abandonment thereof.

SERVICE—ABANDONMENT—REASONS—NECESSITY FOR CONTINUANCE.—The question whether an unpaying street railway line should be abandoned should be decided not on the basis of whether or not the line pays as an individual unit, but rather on the basis of whether or not public convenience and necessity require its operation.

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Levinsky and Jones, by *Gilbert S. Jones*, for the Applicant.
J. Leroy Johnson, for the City of Stockton.
M. J. Henry, for certain residents and property owners.

CARR, *Commissioner*.

OPINION.

This is an application by Central California Traction Company to abandon passenger service over a local street car line, known as the "Sunnyside line," which it operates partly in the city of Stockton and partly in the unincorporated portion of San Joaquin County.

A public hearing was held on this application in Stockton on November 22d.

The line on which it is proposed to abandon service is a remnant of an old local street railway system which the Central California Traction Company at one time operated in the city of Stockton and vicinity. It subsequently has abandoned certain of the tracks and leased all of the remainder, with the exception of the line which is the subject of the present application, to the Stockton Electric Railroad Company in 1915. At the time that approval of this lease was sought from the Commission, the applicant also requested authority to abandon service on this Sunnyside line but such authority at that time was denied. The line is slightly less than one mile in length and extends from the intersection of Park and Ophir streets easterly along Park to Wilson way, on Wilson way to Cherokee road and thence along Cherokee road to a point near the Traction Company's car barns. The portions of the line on Park street and Wilson way are in the city of Stockton and that on Cherokee road is in the county of San Joaquin.

A single shuttle car, giving twenty-minute headway, is operated for a period of approximately eighteen hours each day. At Park and Ophir streets passengers are transferred to or from the Ophir street line of the Stockton Electric Railroad, which carries them to or from the business district. The company also operates freight service over this track, serving several industries which have spur track connections, and it is also used as an interchange between the interurban operation of the Traction Company and the Western Pacific.

Under the transfer arrangement which it has with the Stockton Electric Railroad, the Traction Company pays the Stockton Electric 3 cents for each transfer honored on the lines of the latter company and collects 2 cents for each Stockton Electric transfer honored on its railroad. As practically all passengers carried on the Sunnyside line transfer to or from the Stockton Electric Railroad line, the effect on the Traction Company's revenue is that they receive 3 cents for each inbound passenger and 2 cents for each outbound passenger. From the exhibits filed, there is considerably more outbound patronage than inbound and, as a result, the figures submitted show that approxi-

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mately two-thirds of the traffic on the line returns a revenue of but 2 cents a passenger.

In support of its petition for abandonment, the company presented exhibits showing that for the years 1923 to 1926, inclusive, and the first ten months of 1927, the passenger revenue was as follows:

Year	*Passenger revenue*
1923	$2,384 31
1924	2,206 85
1925	2,172 58
1926	2,178 95
1st 10 months—1927	1,669 27

The annual cost of platform labor is about $3,600. No figures on the cost of current consumed or maintenance and depreciation of equipment were submitted.

The freight business from the three industries switched on this line for the year 1925 totaled $2,308.88, while the charges collected for switching to and from the Western Pacific totaled $1,625.65. In addition to this business, the Traction Company handled, over the Western Pacific interchange, business for which the line haul revenue accruing to the Traction Company totaled approximately $72,500 in this same period. From the record, it appears that the freight revenue has compensated the Traction Company for any losses incurred by the passenger operation on this line.

At the hearing, sixteen residents of the district served by the Sunnyside line appeared and testified as to the necessity of this transportation for themselves and their families. The line apparently serves a fairly well developed territory which is expanding, the records showing that new tracts are being opened and new houses being erected from time to time. The exhibits indicate that the car line is patronized by approximately 300 passengers per day and, while the contention is made that the persons now using the Sunnyside line could use the Ophir street line of the Stockton Electric Railroad, it appears that, in order to do so, many of them would be required to walk one-half mile or more.

Copies of the franchises of the city of Stockton and the county of San Joaquin, by benefit of which this track is maintained and operated, permit both freight and passenger operation but the applicant proposes to discontinue the passenger service only. There is no evidence that either the city or the county consents to such abandonment of a portion of the service. These franchises also show that this line was intended to be a part of a comprehensive system of street railway transportation serving the city of Stockton and its immediate vicinity, and it appears that the company did construct, and for a number of years operated, such a system.

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In accepting such franchises, a carrier obligates itself to furnish service to the community as a whole and it is almost a universal condition that street railway companies in furnishing such community service expect to and do operate nonpaying ends of lines. Apparently, the Sunnyside line is such an end. It has never been the policy of this Commission to permit street railway companies to select for operation only the income-producing portions of their lines and abandon those portions which, because of their distance from the center of population or because of other reasons, are not, in themselves, self-supporting.

In the present case the applicant has leased to the Stockton Electric Railroad all of the existing local system covered by these franchises, with the exception of the line on which it now seeks to discontinue passenger service. It may be that the Central California Traction Company is unfortunate in that it has retained a decidedly unremunerative portion of this system; but the fact that it has chosen to divest itself of the better paying lines is no adequate reason that the portion of the public, who depend on the nonpaying end for service, should suffer.

The matter should be decided not on the basis of whether or not this line pays as an individual unit, but rather on the basis of whether or not public convenience and necessity require its operation. In the present case, I believe that the record shows that a public necessity for the continuance of this operation exists and, if so, the application to abandon service should be denied.

The following form of order is recommended:

ORDER.

Central California Traction Company, a corporation, having applied to the Commission for an order to abandon service over a part of its system known as the "Sunnyside line," a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision, therefore, basing an order upon the conclusions set forth in the foregoing opinion;

It is hereby ordered, that the application be and it is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twelfth day of January, 1928.

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DECISION No. 19259.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING APPLICANT TO ISSUE, SELL AND DELIVER ITS COMMON STOCK IN THE AMOUNT, IN THE MANNER AND FOR THE PURPOSES SET FORTH HEREIN.

Application No. 14286.
Decided January 18, 1928.

SECURITY ISSUES—STOCK—GAS AND ELECTRIC UTILITY.—Pacific Gas and Electric Company authorized to issue and sell to its stockholders and none other on or before December 31, 1928, at not less than par, $6,460,000 of its common capital stock to pay construction expenditures.

C. P. Cutten, for Applicant.

BY THE COMMISSION.

OPINION.

Pacific Gas and Electric Company in this proceeding asks permission to issue and sell to its common stockholders at par $6,460,000 par value of its common capital stock, and use the proceeds obtained from the sale of its common stock to pay the construction expenditures to which reference will hereafter be made.

Pacific Gas and Electric Company as of October 13, 1927, had an authorized stock issue of $160,000,000 divided into $80,000,000 of 6 per cent first preferred and $80,000,000 of common stock. As of the same date it reports stock issued and outstanding in the following amounts:

First preferred stock		$68,905,631 91
Common stock		64,631,898 33
In hands of the public	$64,583,465 00	
Owned by subsidiary companies	48,433 33	

It further reports that as of October 31, 1927, it had subscriptions for shares of its preferred capital stock in the aggregate par value of $1,894,975 and shares of its common capital stock in the aggregate par value of $1,151,100. The shares representing such subscriptions have not yet been issued, because of the fact that subscribers have not completed their payments.

In its Exhibit No. 5 applicant reports the following:

Unreimbursed capital expenditures of Pacific Gas and Electric Company and Mt. Shasta Power Corporation at May 31, 1927, as per Exhibit "B," Application No. 13940		$470,823 57
Construction expenditures from May 31, 1927, to and including October 31, 1927, of Pacific Gas and Electric Company and Mt. Shasta Power Corporation, as reported in monthly statements filed with the Railroad Commission	$4,903,363 58	
Deduct sale of water properties	2,455,000 00	
Net		2,448,363 58

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Unexpended balances of capital expenditures authorized at October 31, 1927, and reported in monthly statements filed with the Railroad Commission:		
Pacific Gas and Electric Company	$6,799,263 63	
Mt. Shasta Power Corporation	194,355 51	
Subtotal		$6,993,598 54
Estimated cost of new construction arising out of development of the company's business and the addition of new consumers during the remainder of the year 1927 and the calendar year 1928		6,000 000 00
Retirement of bonds		13,226,500 00
Pacific Gas and Electric Company first and refunding mortgage Series "A" 7 per cent bonds	$10,720,000 00	
Sacramento Electric Gas and Railway Co. first mortgage 5 per cent bonds	1,083,000 00	
Metropolitan Gas Corporation first mortgage 5 per cent bonds	988,500 00	
Sacramento Valley Power Co. first and refunding mortgage 6 per cent bonds	435,000 00	
Grand total		$29,139,285 69

Against these expenditures the Commission has heretofore authorized the company to use $17,150,800.51 obtained from the sale of stocks and bonds. Deducting the $17,150,800.51 from the $29,139,285.69 leaves a balance of $11,988,485.18, against which the Commission has not authorized the issue of securities. It is for the purpose of paying in part the $11,988,485.18 that applicant asks permission to issue and sell $6,460,000 of its common capital stock. It is of record that this stock will be offered to applicant's common stockholders in the proportion of one share of the additional common stock to each ten shares of common stock owned by each of its common stockholders.

ORDER.

Pacific Gas and Electric Company having asked permission to issue $6,460,000 of its common capital stock, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required for the purposes specified herein and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Pacific Gas and Electric Company be and it is hereby authorized to issue and sell to its stockholders and none other, on or before December 31, 1928, at not less than par $6,460,000 of its common capital stock and use the proceeds obtained from the sale of such stock to finance in part such cost of the additions, extensions, betterments and improvements to its plant and facilities and to those of Mt. Shasta Power Corporation shown in Exhibit 5 filed in this proceeding as is properly chargeable to fixed capital accounts under the uniform system of accounts prescribed or adopted by this Commission.

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It is hereby further ordered, that the authority herein granted shall become effective upon the date hereof; and that Pacific Gas and Electric Company shall keep such record of the issue and sale of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this eighteenth day of January, 1928.

DECISION No. 19261.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING IT TO PURCHASE FIVE THOUSAND SHARES OF THE COMMON CAPITAL STOCK OF THE ONTARIO POWER COMPANY, A CORPORATION.

SUPPLEMENTAL APPLICATION FOR AUTHORITY TO ACQUIRE AND HOLD FOUR THOUSAND SEVEN HUNDRED FIFTY SHARES OF PREFERRED STOCK OF ONTARIO POWER COMPANY AND TO ISSUE NINETEEN THOUSAND SHARES OF PREFERRED STOCK, SERIES "A," SEVEN PER CENT IN EXCHANGE THEREFOR.

Application No. 14134.
Decided January 18, 1928.

SECURITY ISSUES—STOCK—ACQUISITION OF BY ANOTHER UTILITY.—Southern California Edison Company authorized to acquire 4750 shares of the preferred stock of Ontario Power Company and to issue in payment therefor 19,000 shares of preferred stock, series "A," 7 per cent, of a total par value of $475,000.

BY THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

In its supplemental application filed on December 27th in the above entitled matter, the Southern California Edison Company asks permission to acquire and hold 4750 shares ($475,000 par value) of 7 per cent cumulative preferred stock of the Ontario Power Company now issued or subscribed for; and to issue from time to time 19,000 shares of its preferred Series "A" 7 per cent stock of the par value of $25 per share and of the aggregate par value of $475,000 and to exchange all or any part of said shares for the shares of the preferred stock of the Ontario Power Company in the proportion of four shares of applicant's Series "A" 7 per cent preferred stock of the par value of $25 each for each share of the preferred stock of the Ontario Power Company of the par value of $100 per share.

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By Decision No. 19044, dated November 14, 1927, the Commission authorized the Southern California Edison Company to purchase and hold the outstanding common stock ($500,000) of Ontario Power Company. The Southern California Edison Company now proposes to purchase through exchange all of the outstanding and subscribed for preferred stock of the Ontario Power Company. It reports that it desires to acquire the preferred stock of Ontario Power Company in order to effectuate its plan, heretofore submitted, to acquire all of the properties of Ontario Power Company, and upon the retirement of the bonded indebtedness of Ontario Power Company, to dissolve said corporation.

We have considered applicant's request and are of the opinion that the money, property or labor to be acquired through the issue of $475,000 of stock is reasonably required by applicant and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income; therefore,

It is hereby ordered, that Southern California Edison Company may acquire from the holders thereof, and hold all or any part of the 4750 shares of the preferred stock of the Ontario Power Company now issued or subscribed for.

It is hereby further ordered, that Southern California Edison Company may issue from time to time 19,000 shares of its preferred stock, Series "A," 7 per cent of the par value of $25 per share, and of the aggregate par value of $475,000, and to exchange all or any part of said shares for the shares of preferred stock of Ontario Power Company in the proportion of four shares of applicant's preferred stock, Series "A," 7 per cent of the par value of $25, for each share of the said preferred stock of the Ontario Power Company of the par value of $100 per share.

It is hereby further ordered, that applicant shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this eighteenth day of January, 1928.

DECISION No. 19262.

IN THE MATTER OF THE APPLICATION OF VALLEY AND COAST TRANSIT COMPANY, A CALIFORNIA CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE AND SALE OF ITS TOTAL AUTHORIZED CAPITAL STOCK, AND IN THE MATTER OF THE APPLICATION OF E. L. McCONNEL TO SELL, AND VALLEY AND COAST TRANSIT COMPANY, A CORPORATION, TO PURCHASE,

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THE OPERATIVE RIGHTS, FRANCHISES, PROPERTY, ASSETS, GOOD WILL AND BUSINESS OF THAT CERTAIN MOTOR BUS, EXPRESS AND FREIGHT TRANSPORTATION BUSINESS, NOW BEING OPERATED AND CONDUCTED BY SAID E. L. McCONNEL UNDER THE FIRM NAME AND STYLE OF VALLEY AND COAST TRANSIT COMPANY.

Application No. 14339.
Decided January 18, 1928.

TRANSFER—SECURITY ISSUES—STOCK.—E. L. McConnel authorized to transfer to Valley and Coast Transit Company operative rights and property, and the latter authorized to issue in payment therefor $30,000 of its capital stock.

CONSOLIDATION MERGER AND SALE—IN GENERAL.—Whatever interests an automotive operator may have in a pending application to extend service are of a contingent nature and not assignable, and in a proceeding to transfer existing operative rights, authorization will not be granted to transfer additional franchises or extensions that may be granted to the operator.

Charles T. White, for Applicants.

BY THE COMMISSION.

OPINION.

The Railroad Commission is asked to make its order authorizing E. L. McConnel to sell and transfer operative rights and other properties used in the conduct of his auto stage and truck transportation business to Valley and Coast Transit Company, a corporation, and authorizing the corporation to purchase and acquire such rights and properties and to issue in payment, $30,000 of its common capital stock.

The application shows that Valley and Coast Transit Company was organized, under and by virtue of the laws of the State of California, on or about January 5, 1928, with an authorized capital stock of $30,000, divided into three hundred shares of the par value of $100 each. It appears that the corporation was organized primarily for the purpose of acquiring and operating the auto stage and truck business now being conducted by E. L. McConnel under the firm name and style of Valley and Coast Transit Company and that it intends to issue, for that purpose, all of its authorized capital stock.

Applicants report the value of the properties which Valley and Coast Transit Company, a corporation, desires to acquire at $30,020.96. This includes nineteen trucks and trailers which have cost new $47,000 and all of which are in operation. The $30,020.96 also includes machinery, tools, operating supplies, real property and expenditures incurred to secure franchises. The operative rights to be transferred are those acquired by E. L. McConnel under and by virtue of decisions of this Commission as follows:

(1) By Decision No. 5469, dated June 6, 1918, in Application No. 3807, E. L. McConnel was granted a certificate of public convenience and necessity for the transportation, as a common carrier, of express, light freight and messages between Paso Robles and San Luis Obispo and the intermediate points of Santa Margarita, Atascadero and Templeton.

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(2) By Decision No. 7077, dated February 5, 1920, in Application No. 4588, E. L. McConnel was granted a certificate of public convenience and necessity for the transportation, as a common carrier, of freight, baggage and express between Paso Robles and San Miguel.

(3) By Decision No. 7535, dated May 3, 1920, in Application No. 4644, E. L. McConnel was granted a certificate of public convenience and necessity for the transportation of freight, as a common carrier, between San Luis Obispo and Orcutt, serving as intermediate points Nipomo and Santa Maria, provided that no local shipments be handled between Arroyo Grande, Pismo, San Luis Obispo and intermediate points.

(4) By Decision No. 7688, dated June 8, 1920, in Application No. 5737, E. L. McConnel was authorized to acquire, from V. E. Lloyd, the freight and express rights between San Luis Obispo and Santa Maria that had been acquired by said V. E. Lloyd by reason of having operated prior to and since May 1, 1917, the effective date of the Auto Stage and Truck Transportation Act.

(5) By Decision No. 11354, dated December 13, 1922, in Application No. 8487, E. L. McConnel was authorized to acquire, from Henry Minetti and Frank N. Villa, the operative right for the transportation of property, as a common carrier, between San Luis Obispo, Cayucos, Cambria and intermediate points, which operative right had been acquired by said Henry Minetti and Frank N. Villa by reason of having operated prior to and since May, 1917.

(6) By Decision No. 13000, dated January 9, 1924, in Application No. 9577, E. L. McConnel was authorized to acquire from M. G. Filipponi, the operative right for the transportation of freight, as a common carrier, between San Luis Obispo, Cambria, San Simeon and intermediate points northwesterly of Cayucos, which operative right had been acquired by said M. G. Filipponi by authority granted by Decision No. 7532, dated May 3, 1920, in Application No. 4695.

(7) By Decision No. 14347, dated December 9, 1924, in Application No. 10036, E. L. McConnel was authorized to acquire from Joe Genardini the operative right for the transportation of freight and express between San Luis Obispo and Morro and intermediate points, which operative right had been acquired by said Joe Genardini by reason of having operated prior to and since May 1, 1917.

(8) By Decision No. 16782, dated May 28, 1926, in Application No. 8358, as amended by Decision No. 16971, dated June 19, 1926, E. L. McConnel was granted a certificate of public convenience and necessity for the transportation of passengers, freight and express, as a common carrier, between San Luis Obispo and San Simeon, serving the intermediate points of Morro, Cayucos, Cambria and intermediate points.

In addition to the operative rights granted E. L. McConnel in the decisions referred to above, applicants also ask for authority to transfer all additional franchises or extensions that may be granted E. L. McConnel pursuant to applications heretofore made by him and now pending before the Commission and it appears, in this connection, that there now is pending before the Commission an application, No. 12258, in which E. L. McConnel asks for an order authorizing him to extend his present service north to Gilroy, south to Santa Barbara and east to Fresno and Bakersfield and tributary territory and to intermediate points, as set forth more particularly in that application. Whatever interests E. L. McConnel may have in such proceeding are of a contingent nature and not assignable.

We suggest that hereafter, in the event Application No. 12258 is granted, applicants file a new application requesting authority to transfer whatever rights may be granted in that matter from E. L. McConnel to Valley and Coast Transit Company, a corporation.

In other respects we believe the application herein should be granted. In authorizing the transfer of the operative rights the purchaser is

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hereby placed on notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited to the number of rights which may be given. The Commission at the early stages of the development of this kind of transportation should be extremely careful not to lend encouragement to the idea that these rights possess a substantial element of value.

ORDER.

Application having been made to the Railroad Commission for authority to transfer operative rights and property and to issue stock, and the Railroad Commission being of the opinion that this is a matter in which a public hearing is not necessary, and that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through such issue is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that E. L. McConnel be and he hereby is authorized to transfer to Valley and Coast Transit Company, a corporation, the properties referred to in the foregoing opinion and the operative rights heretofore acquired by him under authority granted by Decisions Nos. 5469, 7077, 7535, 7688, 11354, 13000, 14347, 16782 and 16971.

It is hereby further ordered, that Valley and Coast Transit Company, a corporation, be and it hereby is authorized to acquire the operative rights and properties that E. L. McConnel is herein authorized to transfer and to issue in payment therefor $30,000 of its capital stock.

The authority herein granted is subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate-fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.

2. Applicant E. L. McConnel shall immediately unite with applicant Valley and Coast Transit Company in common supplement to the tariffs on file with the Commission, applicant E. L. McConnel on the one hand withdrawing, and applicant Valley and Coast Transit Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.

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3. Applicant E. L. McConnel shall immediately withdraw time schedules filed in his name with the Railroad Commission and applicant Valley and Coast Transit Company shall immediately file, in duplicate, in its own name, time schedules covering service heretofore given by applicant E. L. McConnel, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant E. L. McConnel, or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

5. No vehicle may be operated by applicant Valley and Coast Transit Company, unless such vehicle is owned by said applicant or is leased under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. No authority is herein granted to Valley and Coast Transit Company to consolidate the operative rights it herein is authorized to acquire nor to enlarge them in any respect beyond these rights now held by E. L. McConnel.

7. Valley and Coast Transit Company shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty days after such issue, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

8. The authority herein granted shall become effective upon the date hereof.

Dated at San Francisco, California, this eighteenth day of January, 1928.

Decision No. 19276.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY, A CORPORATION, FOR PERMISSION TO CONSTRUCT CERTAIN TRACKS AT GRADE ACROSS CERTAIN STREETS BETWEEN ELEVENTH STREET AND BAY STREET AND ACROSS LAWRENCE STREET TO PROVIDE YARD FOR HANDLING PERISHABLE FREIGHT.

Application No. 13694.

Decided January 20, 1928.

CROSSINGS—GRADE CROSSINGS.—Southern Pacific Company authorized to construct a temporary railroad track at grade across Ninth street in the city of Los Angeles.

CROSSINGS—GRADE CROSSINGS—IN GENERAL.—Authorization to construct a temporary crossing at grade was granted upon the express condition that a

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further joint application for a separation of grades be filed by the interested parties within a specified time, such authorization to become void and the temporary track to be removed upon failure to file such application.

BY THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

In this proceeding Southern Pacific Company, in connection with the development of a team track yard for handling perishable freight and lying east of Alameda street, sought permission to construct tracks at grade across Eleventh street and certain other streets, including Ninth street, north thereof.

In Decision No. 18877, dated October 4, 1927, this Commission granted applicant permission to construct all of the grade crossings applied for with the exception of the crossing of Ninth street, subject to conditions to be set forth in a supplemental order to be issued following a determination of the plan of grade separation at Ninth and Lemon streets. The application to cross Ninth street at grade was denied in said decision.

On January 7, 1928, applicant filed a supplemental application in this matter in which temporary authority is requested to construct said track across Ninth street at grade at the location set forth in the application as follows:

NINTH STREET:

Beginning at a point in the southerly line of Ninth street distant easterly thereon 8 feet, more or less, from the southeast corner of Ninth and Lemon streets; thence northerly along a curve and a straight line 82 feet, more or less, to a point in the northerly line of Ninth street distant easterly thereon 8.5 feet, more or less, from the northeast corner of Ninth and Lemon streets.

Such authority is requested upon the distinct understanding and agreement by applicant that such construction is temporary only and that a subsequent application will be filed seeking permission to construct the track or tracks referred to in this application, together with the tracks of the Los Angeles and Salt Lake Railroad at separated grades with Ninth street within three months after the effective date of an ordinance of the city of Los Angeles granting a permanent 21-year franchise to Southern Pacific Company and Southern Pacific Railroad Company for this crossing, provided that if such application is not filed with the Commission on or before July 1, 1928, said temporary track across Ninth street is to be removed and service thereover discontinued upon order of this Commission.

The application sets forth that on December 30, 1927, the city council of the city of Los Angeles unanimously voted to grant the permanent 21-year franchise and directed that the same be advertised for sale, the time and date of sale to be 10 a.m. on January 16, 1928; that the first notice of sale of the franchise was published in the Los Angeles *Daily Journal* on January 5, 1928; that the city council also unani-

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mously adopted the recommendation of the Board of Public Utilities and Transportation that the applicant herein be granted authority to temporarily cross Ninth street at grade rather than cross a portion of Alameda street or Bay street.

The Commission has been advised by applicant that the 21-year franchise was duly sold to the Southern Pacific Company and Southern Pacific Railroad Company on January 16, 1928.

Applicant states that negotiations have been conducted with the city of Los Angeles and with Los Angeles and Salt Lake Railroad Company in regard to the separation of grades at Ninth and Lemon streets and that plans for the separation have been completed by the city. The plan proposes to raise the railroads about six feet and to depress the street a sufficient distance to give standard clearance.

It appears to the Commission that this is not a matter in which a public hearing is necessary and that the application to construct said temporary track at grade across Ninth street should be granted, subject to certain conditions; therefore,

It is hereby ordered, that permission and authority be and it is hereby granted to Southern Pacific Company to construct a temporary railroad track at grade across Ninth street in the city of Los Angeles, county of Los Angeles, State of California, at the location hereinafter particularly described and as shown by the map (L. A. Div'n. Dw. C-16 Sheet 1 of 1) attached to the application.

Description of Crossing.

NINTH STREET:

Beginning at a point in the southerly line of Ninth street distant easterly thereon 8 feet, more or less, from the southeast corner of Ninth and Lemon streets; thence northerly along a curve and a straight line 82 feet, more or less, to a point in the northerly line of Ninth street distant easterly thereon 8.5 feet, more or less, from the northeast corner of Ninth and Lemon streets.

Said crossing, together with the crossings authorized in this proceeding under Decision No. 18877, shall be constructed subject to the following conditions, namely:

(1) The entire expense of constructing the crossings, together with the cost of their maintenance thereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Said crossings, with the exception of the crossing of Lawrence street, shall be constructed equal or superior to type shown as Standard No. 2, in General Order No. 72, of this Commission, and all of said crossings shall be constructed of a width to conform to those portions of

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said streets now graded, with the tops of rails flush with the roadways and with grades of approach not exceeding those delineated on said drawing (L. A. Div'n. Dwg. C-16); shall be protected by suitable crossing signs and shall in every way be made safe for the passage thereover of vehicles and other road traffic. Said crossing of Lawrence street shall be constructed equal or superior to type shown as Standard No. 3, in said General Order No. 72.

(3) Applicant shall, within thirty days thereafter, notify this Commission, in writing, of the completion of the installation of said crossings.

(4) If said crossings, exclusive of the Ninth street crossing, shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(5) The authority herein granted to construct said temporary crossing of Ninth street at grade is given upon the express condition set forth by applicant in its application that a further joint application for a separation of grades at Ninth street will be filed by the interested parties within three months after the effective date of the ordinance of the city of Los Angeles granting said permanent 21-year franchise and/or in any event on or before July 1, 1928. If such application for said grade separation is not filed on or before July 1, 1928, the authority herein granted to construct said track at grade across Ninth street shall thereupon become null and void and said temporary track across Ninth street shall be removed and the street restored to its present condition.

(6) No train, motor, engine or car shall be operated over said Ninth street crossing between the hours of 7.30 a.m. and 10 a.m. and between the hours of 4 p.m. and 6.30 p.m. A uniformed police officer shall be maintained, at the expense of the applicant, for the protection of said Ninth street crossing between the hours of 10 a.m. and 4 p.m. Said Ninth street crossing shall be further protected by crossing gates to be installed and maintained at the expense of applicant. Said gates to be operated from 6.30 p.m. to 7.30 a.m. daily.

(7) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this twentieth day of January, 1928.

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DECISION No. 19280.

ROSENBERG BROS. & CO., CALIFORNIA STATE RICE MILLING CO., CAPITAL RICE MILLS, THE NATIONAL RICE MILLS

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 2432.

Decided January 23, 1928.

REPARATION.—Reparation awarded on shipments of paddy rice moved from Mackert, Robbins, Seymour, Subaco, Pelger and Everglade to Sacramento and San Francisco.

BY THE COMMISSION.

OPINION.

Complainants are corporations and copartners engaged in buying and selling rice at West Sacramento and San Francisco. By complaint filed October 13 and amended December 8, 1927, they allege that the rates charged for the transportation of approximately 336 carloads of paddy rice shipped from Mackert, Robbins, Seymour, Subaco, Pelger and Everglade to Sacramento and San Francisco during the period from October 13, 1925, to the date of filing of this complaint, and 56 carloads shipped from Mackert, Seymour and Subaco and delivered at Sacramento during November and December, 1924, were unjust and unreasonable to the extent they exceeded and now exceed 125 per cent of the contemporaneous rates applicable on whole grain from and to the same points.

We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates are stated in cents per 100 pounds.

The 56 carloads shipped from Mackert, Seymour and Subaco and delivered at Sacramento during November and December, 1924, were registered with this Commission informally October 11, 1926, thereby staying the running of the statutes on those shipments.

The points of origin are on the Sutter Basin branch of defendant's line south of Hinsdale, and the rates charged were 13 cents to Sacramento and 22½ cents to San Francisco. Said rates were specifically named from Hinsdale and held as maximum from the points of origin involved, such points being directly intermediate to Hinsdale.

The concurrent rates on whole grain to Sacramento were 9 cents from Mackert, Robbins, Seymour and Subaco and 10½ cents from Pelger and Everglade. To San Francisco the rates were 16 cents from Mackert, Robbins and Seymour and 17 cents from Subaco, Pelger and Everglade. The rates sought range from 11½ cents to 13 cents at Sacramento and 20 cents to 21½ cents at San Francisco and are 125

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per cent of the rates applicable on whole grain from and to the same points.

Complainants rely upon our Decision No. 10895, *Rosenberg Bros. and Company et al.* vs. *Southern Pacific Company et al.*, 22 C. R. C. 184, to support their allegation of unreasonableness. In that decision, dated August 23, 1922, we found that the rates on paddy rice, carload, between points on defendant's lines in California were unreasonable subsequent to January 7, 1922, and for the future. The decision reads in part as follows:

> Taking all factors into consideration, we found the then existing rates on rice unreasonable to the extent that they exceeded rates based on 125 per cent of the rates established August 26, 1920, on whole grain. Reparation was not asked in either proceeding, but the question of reasonableness of rates for the future was involved in both cases. In determining that issue, we refused either to prescribe a mileage scale or to establish the same rates on rice as were applicable to whole grains, as prayed for in the two complaints. On the contrary we but continued a policy adopted by the principal defendant in initiating rice rates, that is, making such rates with relation to the grain rates. The relationship fixed by us, however, differed in degree from that used by the defendant and was clearly intended as a basis for future application. Were this not the case, our finding would have been futile. As a matter of fact, the relationship fixed by our order did continue until January 7, 1922, when the rates on grain were reduced without a corresponding reduction in the rates on rice, thereby again producing a situation similar to that condemned in our Decision No. 8517. It appears, therefore, that during the period of federal control up to and including February 28, 1920, the federal commission has recognized as reasonable rice rates based on 125 per cent of the grain rates; that this basis prevailed between February 5, 1921, and January 7, 1922, and was restored with but few deviations on July 1, 1922. In the light of all the circumstances, no other conclusion can be reached than that basis should also have prevailed during the period January 7, 1922, to July 1, 1922, and should now be in effect. To the extent, therefore, that the rates on paddy rice during the period last named exceeded, and to the extent that they now exceed, 125 per cent of the rates contemporaneously applicable on whole grains between the same points, they were, are, and for the future will be to that extent unreasonable.

The rates named from Hinsdale, applied on the shipments in question, were established on the basis prescribed by the Commission from that point, but such rates exceeded by more than 25 per cent the rates applicable on whole grain from and to the specific intermediate points involved in this proceeding. Effective December 26, 1927, defendant established rates on paddy rice from all points on the Sutter Basin branch to Sacramento and San Francisco on the basis prescribed by the Commission in Decision No. 10895.

Defendant admits the allegation of the complaint and has signified a willingness to make reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the rates assailed were unjust and unreasonable to the extent they exceeded the subsequently established rates, which are 125 per cent of the contemporaneous rates on whole grain; that complain-

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ants made the shipments as described, paid and bore the charges thereon and are entitled to reparation.

Complainants will submit statements of shipments to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

ORDER.

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainants, Rosenberg Bros. & Co., California State Rice Milling Co., Capital Rice Mills and The National Rice Mills, all charges it may have collected in the amount of the difference between the freight charges paid and those that would have accrued at the rates herein found reasonable on the shipments of paddy rice involved in this proceeding and moved from Mackert, Robbins, Seymour, Subaco, Pelger and Everglade to Sacramento and San Francisco.

Dated at San Francisco, California, this twenty-third day of January, 1928.

DECISION NO. 19284.

IN THE MATTER OF APPLICATION OF SOUTHERN PACIFIC MOTOR TRANSPORT COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CARRY EXCESS BAGGAGE AND EXPRESS ON THE SO-CALLED DUNHAM STAGE LINE, BETWEEN NAPA AND SANTA ROSA AND INTERMEDIATE POINTS.

Application No. 14335.
Decided January 23, 1928.

CERTIFICATES—AUTOMOTIVE TRANSPORTATION—EXPRESS.—Southern Pacific Motor Transport Company authorized to transport express and baggage between Napa and Santa Rosa and intermediate points on automotive passenger cars.

CERTIFICATES—GROUNDS FOR GRANTING OR REFUSING—PRIOR ILLEGAL OPERATION.—Subsequent to the transfer of operative rights a purchasing carrier was granted a certificate to perform an express and baggage service carried on for years under the mistaken impression that proper legal authority for such service had been established.

VALUATION—PARTICULAR INTANGIBLES—OPERATIVE RIGHTS.—Upon the granting of a certificate applicant was placed upon notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates.

BY THE COMMISSION.

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OPINION AND ORDER.

This is an application by Southern Pacific Motor Transport Company, a corporation, for a certificate of public convenience and necessity to operate an automotive service for the transportation of express and baggage in connection with and as part of the automotive passenger stage service it is now operating under authority of the Railroad Commission between Napa and Santa Rosa and intermediate points.

Applicant proposes to charge rates in accordance with schedule marked Exhibit "A," which exhibit is attached to the application herein and made a part thereof.

Applicant herein recently purchased from the estate of A. Dunham an operating right for an automotive service for the transportation of passengers between Napa and Santa Rosa and intermediate points, the Commission approving the transfer in its Decision No. 19170, dated December 23, 1927, and issued on Application No. 14267. We quote from said decision:

> The operating right herein proposed to be transferred was established by A. (Azariah) Dunham through operation prior to May 1, 1917, and the filing of tariffs and time schedules in accordance with the requirements of the Railroad Commission. C. R. C. No. 1, filed by A. Dunham under the fictitious name of Dunham Auto Bus, the issuance date being February 24, 1917, and effective date March 1, 1917, covers service between Napa, Sonoma, Santa Rosa and intermediate points. Rates are quoted to the following intermediate points; Carneros, Vineberg, Sonoma, Hot Springs, Eldridge, Glen Ellen, Kenwood, Annadel and Melitta. No package or express baggage rates were shown in C. R. C. No. 1 and there is no record of the Commission ever having authorized Dunham to transport property between Napa and Santa Rosa. Package and excess baggage rates appear for the first time in C. R. C. No. 4, issued by Dunham on August 15, 1921, and effective August 17, 1921. In view of this record the order herein will authorize the transfer of an operating right limited to passengers and hand baggage.

The instant application, then, is not for a certificate authorizing a service to be newly established but is, in effect, an application for a certificate under which legally to perform a service carried on for years under the mistaken impression that proper legal authority for the service had been established. Applicant herein declares:

> That at the time said stage line was taken over by your applicant, as aforesaid, a considerable amount of package or express business and excess baggage was being handled by said stage line; that transportation was a material convenience to and was necessary for the requirements of persons living along the line of said stage route; and if the transportation of such package or express matter and excess baggage is discontinued by your applicant, there will be a material inconvenience suffered by the people along said line requiring said service.

In view of all the circumstances and in view of the further fact that the only other carrier operating between Napa and Santa Rosa is the Southern Pacific Company, of which applicant herein is a subsidiary, we are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

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Southern Pacific Motor Transport Company is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited to the number of rights which may be given. The Commission at the early stages of the development of this kind of transportation should be extremely careful not to lend encouragement to the idea that these rights possess a substantial element of value, either for rate fixing or capitalization.

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Southern Pacific Motor Transport Company, a corporation, of an automotive service for the transportation of express and baggage between Napa and Santa Rosa and intermediate points, said express and baggage to be transported on automotive passenger cars operated by Southern Pacific Motor Transport Company between the points served by said company under authority of the certificate of public convenience and necessity acquired by Railroad Commission Decision No. 19170; and,

It is hereby ordered, that a certificate of public convenience and necessity for such a service be and the same is hereby granted to Southern Pacific Motor Transport Company, a corporation, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof tariffs of rates, such tariffs of rates to be identical with those attached to the application herein, or rates satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed twenty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twenty-third day of January, 1928.

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Decision No. 19287.

IN THE MATTER OF THE APPLICATION OF SAN JOSE WATER WORKS, A CORPORATION, FOR PERMISSION TO RENEW OUTSTANDING NOTES.

Application No. 14295.

Decided January 23, 1928.

Security Issues—Water Utility—Notes.—San Jose Water Works authorized to issue its notes in the aggregate amount of $400,000 payable on or before one year after effective date of order with interest at not exceeding 6 per cent per annum for the purpose of refunding existing notes.

H. S. Kittredge, for Applicant.

By the Commission.

ORDER.

San Jose Water Works has applied for permission to issue $400,000 of notes payable on or before one year after date to refund $400,000 of notes now outstanding. A public hearing was had before Examiner Fankhauser. The evidence submitted at such hearing shows that the money obtained through the issue of the $400,000 notes now outstanding was used to pay in part the cost of fixed capital installed from December 1, 1925, to December 31, 1927, which cost is reported at $710,102.46, as shown in detail in the application.

The Railroad Commission having considered applicant's request and being of the opinion that the application should be granted as herein provided and that the money, property or labor to be procured or paid for through the issue of the notes is reasonably required for the purpose specified herein and that the expenditures for such purpose are not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that San Jose Water Works be and it hereby is authorized to issue its notes in the aggregate amount of $400,000 payable on or before one year after the effective date of this order with interest at not exceeding 6 per cent per annum for the purpose of refunding the $400,000 of notes set forth in Exhibit "B" filed in this proceeding.

The authority herein granted is subject to the following conditions:

1. Applicant may, if it so desires, issue the $400,000 of notes payable at a period less than one year from the effective date of this order and may renew such notes from time to time, provided the combined terms of the notes originally issued under the authority herein granted and of those given in renewal do not exceed one year from the date of the notes originally issued under this authority.

2. Applicant shall keep such record of the issue and delivery of the notes herein authorized and of the disposition of the proceeds as will

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enable it to file, on or before the twenty-fifth day of each month, a certified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted will become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $400.

Dated at San Francisco, California, this twenty-third day of January, 1928.

DECISION No. 19289.

IN THE MATTER OF THE APPLICATION OF LEWIS A. MONROE, AS AGENT FOR RUSH OPPENHEIMER, FOR AN ORDER GRANTING PERMISSION TO ESTABLISH CLASS RATES AND ADOPT "MONROE'S SHIP BY TRUCK FREIGHT CLASSIFICATION" AS BASIS FOR ASSESSING FREIGHT CHARGES IN LIEU OF PRESENT TARIFF, RESULTING IN BOTH INCREASES AND REDUCTIONS IN RATES BETWEEN SAN DIEGO AND POINTS SERVED.

Application No. 14043.

Decided January 23, 1928.

RATES—AUTO TRUCK.—Rush Oppenheimer, operating an automotive truck line between San Diego and Descanso and between San Diego and Bostonia and intermediate points authorized to adopt "Monroe's Ship by Truck Classification."

Lewis A. Monroe and *H. J. Bischoff*, for Applicant.
John Ballantyne, for San Diego County Farm Bureau, Protestant.
David B. Raeburn, for El Cajon Chamber of Commerce, Protestant.
Jack Kellam, for Traffic Committee of Farm Bureau, Protestant.

BY THE COMMISSION.

OPINION.

This is an application filed by Lewis A. Monroe, as agent for Rush Oppenheimer, an individual, operating an automobile truck line between San Diego and Descanso, and between San Diego and Bostonia and intermediate points, for an order granting permission to establish and maintain a scale of class rates, and to adopt "Monroe's Ship by Truck Classification" to govern the transportation of property between all points served.

Applicant contends the present method of assessing freight charges is inadequate to meet the needs of the shipping public and that the establishment of the proposed rates is not sought for the sole purpose of increasing the revenues but is primarily to provide for a more satisfactory and reliable basis of rates. It is further contended that the application is the result of demands from the shipping public for a basis of class rates to be governed by proper classification.

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A hearing was held at San Diego December 14, 1927, before Examiner Geary and the proceeding having been duly submitted is now ready for our opinion and order.

At the present time applicant has two freight tariffs naming a merchandise rate and specific commodity rates, referred to as the Bostonia and Pine Valley tariffs. The former contains sixteen commodity items, the latter nine commodity items, on such articles as fresh fruit, hay, lumber, live stock and furniture. The greater portion of freight is being carried under the general merchandise rate, which also applies on groceries.

The adoption of class rates in lieu of the present commodity rates will result in both increases and reductions.

Exhibit "B" attached to the petition is a traffic check for the first fifteen days of August, 1927, and shows that the revenue received under the present rates is $32.15 in excess of the revenue that would have accrued if the proposed rates had been applied. There will be increases on certain traffic at El Cajon, Bostonia and Pine Valley and reductions on certain traffic at La Mesa, Lemon Grove and Descanso.

There was introduced at the hearing a statement of revenues and expenses for the period of seven months ending July 31, 1927, which indicates an operating loss, including depreciation, of $1,190.35, or $170.05 per month. According to applicant's annual report for the year 1926, the total revenues received from all operations were $11,309.61, and total operating expenses, including depreciation, were $12,563.72, resulting in an operating loss of $1,254.11. During this period the expenses did not include any compensation for salaries.

Protestants objected to the increase of 3 cents per 100 pounds on freight subject to fourth-class rates under Monroe's classification and to the increase in rates on fresh fruits, and stated that if commodity rates were not established by this applicant certain articles would be moved by other methods. The testimony showed, however, that the Poultry Association and many fruit farmers were not regularly using the services of this applicant although they objected to the adjustment. The proposed first, second, third and fourth classes between San Diego and El Cajon are 30 cents, 25 cents, 20 cents and 15 cents respectively. These rates include pick-up and delivery service and do not appear excessive but compare favorably with the rail rates between the same points of 25 cents, 21 cents, 17½ cents and 15 cents for the same classes of freight, which rail rates apply from depot to depot only.

Beginning January 1, 1927, it became necessary for applicant to provide for a 5 per cent gross revenue tax amounting to approximately $560 per annum. The payment of this gross revenue tax was contested in the courts and no payments made until July, following the court decision.

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Upon consideration of all the facts of record, we are of the opinion and find that this applicant is not earning operating expenses, including depreciation and taxes, and should be authorized to establish and maintain the proposed adjustments. The application will be granted.

ORDER.

This application having been duly submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that applicant, Rush Oppenheimer, be and he is hereby authorized to adopt "Monroe's Ship by Truck Freight Classification" and to publish upon not less than ten days' notice to the Commission and to the public, in tariffs constructed in accordance with the rules and regulations of the Commission, the rates, rules and regulations set forth in Exhibit "A" of the application.

Dated at San Francisco, California, this twenty-third day of January, 1928.

DECISION No. 19290.

IN THE MATTER OF THE APPLICATION OF MOTOR COACH COMPANY FOR AN ORDER PERMITTING IT TO EXTEND ITS PASSENGER STAGE LINES FROM THE CATALINA TERMINAL TO THE LOS ANGELES STEAMSHIP COMPANY'S DOCKS, AND TO MERGE SAID EXTENSION OF LINE WITH ALL OF APPLICANT'S EXISTING STAGE LINES, AND TO OPERATE SAME IN CONJUNCTION THEREWITH.

Application No. 14220.

Decided January 23, 1928.

CERTIFICATES—AUTOMOTIVE TRANSPORTATION—EXTENSION.—Motor Coach Company authorized to extend its passenger stage line from Catalina Terminal at Los Angeles Harbor to the docks of the Los Angeles Steamship Company.

Kidd, Schell and Delamer, by *Herbert W. Kidd,* for Applicant.
H. O. Marler, for Pacific Electric Railway Co., Interested Party.

BY THE COMMISSION.

OPINION.

Motor Coach Company, a corporation, has made application to the Railroad Commission for a certificate of public convenience and necessity to extend its passenger stage lines from the Catalina terminal at Los Angeles Harbor to the docks of the Los Angeles Steamship Company, and to merge this added operation with all of applicant's existing stage lines, and to operate same in conjunction therewith.

A public hearing was conducted by Examiner Williams at Los Angeles.

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Applicant now operates an extensive system of automobile transportation between Long Beach, Wilmington, San Pedro, Lomita, Torrance, Redondo, Hermosa, Manhattan, El Segundo, Venice and Santa Monica. The service into Wilmington now has a branch connecting with the Catalina Island boat terminal at Fries avenue and Water street, with through rates between all points. It is proposed to extend this service over Pier A street (also called Pier street) to the docks of the Los Angeles Steamship Company, a distance of one and seven-tenths miles, in order to make available to passengers of the steamships in either direction direct transportation to the points served by applicant. The extension is over a paved highway now used by all common carriers of freight, and the extension involves no change or addition to applicant's rates.

Through A. L. Owen, secretary and traffic manager of applicant corporation, it was shown that there has been a continuous demand upon applicant for a service to the steamship docks. The Los Angeles Steamship Company has service to and from San Francisco four days each week at this dock, and to San Diego four days each week, and in addition has a steamship to and from Honolulu three times each month. It is the purpose of applicant to receive passengers and carry them through to the steamship docks at the same rate now charged to the Catalina Island terminal.

Carl L. Hyde, secretary of the Torrance Chamber of Commerce, testified that there had been inquiries for a direct service to the Los Angeles steamship docks, at the office of the chamber, and that in his opinion the demand was sufficient to justify the extension sought. He pointed out that the only method by which the Pacific Electric Railway could carry passengers from Torrance, a distance of a few miles from the dock, would be to transport passengers north to Watts Junction near Los Angeles, and then bring them a journey of approximately fifteen miles back to the dock; or passengers may take the Torrance local, getting off at Wilmington and then finding their way to the docks either by taxicab or private conveyance.

Earl W. Porter, manager of the Venice branch of the Los Angeles Chamber of Commerce, testified that while there had been no complaint for lack of service, there have been inquiries of the chamber, and that he believes the service would be a great public convenience.

H. E. Barzen, traffic passenger agent of the Los Angeles Steamship Company, testified that the passenger steamships of the company plying between San Francisco, Los Angeles and San Diego (the *Yale* and *Harvard*) had a passenger capacity of 465, and that the passenger movement is heavy except one or two months in the year; that the establishment of the service, as proposed by applicant, would be a great convenience to the public, and that the steamship company will

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cooperate with applicant, by notifying it whenever passengers wish to be distributed directly over its system. He also testified that the passenger list in the Hawaiian service usually ran from 200 to 400, and that the ships are at dock, either going or coming, three times monthly. Mr. Barzen pointed out that at most of the points served by applicant, the Pacific Electric Company can not give direct service, passengers using this service being required to go either to Watts Junction or to Los Angeles and change cars, involving a journey of many additional miles and added cost.

Applicant proposes an extension of its regular schedules from Catalina terminal to the steamship docks, on all outgoing steamships, except where there is a party of fifteen or more passengers, in which case, a special car will be provided. Applicant keeps its equipment at Lomita, and can furnish such special service on fifteen minutes' notice. Applicant, at the hearing, amended its proposed schedule of operations, so as to make the 2 o'clock schedule leaving Santa Monica arrive at the docks at 3.45 p.m. On incoming steamships, applicant is to maintain a shuttle car which will deliver the passengers at Wilmington to the main line.

At the conclusion of the testimony, the Pacific Electric Railway announced that it had no protest to make on the establishment of the service.

It appears from the showing made by applicant that the extension to be provided is to be an additional facility for the benefit of the public, without additional cost, and that it is being offered in response to a public demand therefor. We see no reason why the authority should not be granted, and an order accordingly will be entered.

ORDER.

Motor Coach Company, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to extend its passenger stage lines from the Catalina terminal at Los Angeles Harbor to the docks of the Los Angeles Steamship Company, and to merge this added operation with all of its existing stage lines, and to operate same in conjunction therewith, a public hearing having been held, the matter having been duly submitted, and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment of the service proposed herein by applicant over and along the following route:

From the Catalina terminal at the intersection of Fries avenue and Water street, at Wilmington, Los Angeles Harbor, along Pier A street (also known as Pier street) to the docks of the Los Angeles Steamship Company; and,

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It is hereby ordered, that a certificate of public convenience and necessity therefor be and the same hereby is granted, subject to the following conditions:

1. Applicant shall file with this Commission within a period of not to exceed ten days from date hereof, its written acceptance of the certificate herein granted as an extension and enlargement of its present operative rights, and not as a new or separate right.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariffs of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twenty-third day of January, 1928.

Decision No. 19291.

IN THE MATTER OF THE APPLICATION OF FLINTRIDGE MOTOR COMPANY, A CALIFORNIA CORPORATION, FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE PASSENGER STAGE SERVICE BETWEEN THE INTERSECTION OF ST. KATHERINE'S DRIVE AND INVERNESS DRIVE, LOS ANGELES COUNTY, TO THE FLINTRIDGE HOTEL, LOS ANGELES COUNTY, AND INTERMEDIATE POINTS.

Application No. 14252.

Decided January 23, 1928.

CERTIFICATE—AUTOMOTIVE TRANSPORTATION.—Flintridge Motor Company authorized to establish automotive passenger service between the intersection of St. Katherine's drive and Inverness drive to the Flintridge Hotel, Los Angeles County.

CERTIFICATES—GROUNDS FOR GRANTING OR REFUSING—POSSIBILITY OF SUCCESS.—Authorization granted to establish an automotive passenger service not expected to be profitable where applicant proposed to assume all losses in operation and did not expect a compensatory adjustment of rates, but desired to establish service to a particular hotel.

Flint and MacKay, by *W. L. Nutten*, for Applicant.

BY THE COMMISSION,

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OPINION.

Flintridge Motor Company, a corporation, has made application to the Railroad Commission for a certificate of public convenience and necessity to operate motor bus service as a common carrier between the intersection of St. Katherine's drive and Inverness drive, Los Angeles County, to the Flintridge Hotel.

A public hearing was conducted by Examiner Williams at Los Angeles.

Applicant corporation is the owner of a certificate to operate motor bus service between La Canada and Pasadena, and this authorized right has been leased to the Pacific Electric Railway, which now conducts the operation as a public carrier.

Applicant proposes to establish a service between the service now conducted by the Pacific Electric Railway and the Flintridge Hotel, this service to be available for the public, the guests of the hotel and its employees. Applicant proposes to charge a fare of 10 cents in either direction, and to operate connecting schedules with all Pacific Electric Railway bus operations. This schedule would call for fourteen trips in each direction, and applicant proposes to use a 15-passenger motor vehicle. The fare to be charged in either direction is 10 cents. The distance to be traversed in the operation is approximately seven-eights of a mile, and proceeds from the intersection of St. Katherine's drive and Inverness drive along St. Katherine's drive to Monarch drive; thence along Monarch drive returning to St. Katherine's drive, and thence to Flintridge Hotel.

Former United States Senator Frank P. Flint, principal owner of the corporation and the hotel, testified that the service is being established because the Pacific Electric Railway could not, without serious derangement of its schedules between La Canada and Pasadena, render such service, and in addition, the service to be established will not be profitable. Mr. Flint said that he estimated the maintenance of the service would entail an out-of-pocket cost of $500 a month and that it was not expected to be profitable, and that the losses in the operation would be absorbed by himself. He further stated that he was not expecting the rate to prove compensatory, and that convenience of the public, hotel guests and its employees only justified the operation. No estimate as to the possible income was made by Senator Flint.

The Flintridge Hotel recently has been constructed and opened to the public, and it appears that there is no way to connect this hotel with Pacific Electric service except in the manner proposed by applicant. As applicant proposes to assume all the losses in the operation and does not expect an adjustment of rates that would prove compensatory, we see no reason why the certificate should not be granted as a matter of convenience to the public.

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The application was not opposed by any other public carrier, and there is no public carrier serving the point of destination, the Flintridge Hotel.

ORDER.

The Flintridge Motor Company, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to operate automobile stage service as a common carrier between the intersection of St. Katherine's drive and Inverness drive to the Flintridge Hotel, a public hearing having been held, the matter having been duly submitted and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment of the service proposed herein by applicant over and along the following route:

From the intersection of St. Katherine's drive and Inverness drive, running thence along St. Katherine's drive to Monarch drive; thence along Monarch drive to St. Katherine's drive; thence on St. Katherine's drive to the Flintridge Hotel; and

It is hereby ordered, that a certificate of public convenience and necessity thereof be and the same hereby is granted, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariffs of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes, the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twenty-third day of January, 1928.

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DECISION No. 19292.

ALBERS BROS. MILLING COMPANY, A CORPORATION,

vs.

SOUTHERN PACIFIC COMPANY, A CORPORATION.

Case No. 2374.

Decided January 23, 1928.

RATES—RAILROAD—GRAIN.—Rates on grain and related articles from Oakland to points south of Lathrop and Stockton via Merced found to be unduly preferential to South Vallejo and the discrimination ordered removed. Reparation denied.

REPARATION—CIRCUMSTANCES DETERMINING RIGHT—DISCRIMINATION.—Where rates are found to be unduly preferential, prejudicial and discriminatory, but not unreasonable, the burden of proof is upon complainant to establish that it has actually been damaged and that such damage was the direct result of such rate adjustment. It cannot be presumed that the amount of damage is the difference between the rate paid and the rate established by the Commission, and when evidence of damage is lacking reparation will be denied. (*Penn. R. Co.* vs. *International Coal Co.*, 230 U. S. 184.)

C. S. Connolly, for Albers Bros. Milling Company, Complainant.
F. W. Mielke and *J. L. Fielding*, for Southern Pacific Company, Defendant.
E. B. Smith and *M. J. McCarthy*, for Sperry Flour Company, Intervener.
E. G. Wilcox, for Oakland Chamber of Commerce, Intervener.
F. A. Somers, for Grangers Business Association, Protestant.

BY THE COMMISSION.

OPINION.

Complainant is a corporation organized under the laws of the state of Oregon, with its principal place of business at San Francisco, and is engaged in the buying, selling and manufacturing of grain and its products with plants at various points in the states of Washington, Oregon, California and elsewhere. By complaint duly filed and as amended, it is alleged that the carload rates on grain, prepared feeds and numerous other grain products from Oakland to points in the San Joaquin Valley are unjust and unreasonable in violation of section 13 and also unduly discriminatory to Oakland and preferential to South Vallejo in violation of section 19 of the Public Utilities Act.

Rates for the future and reparation are asked to points south of Stockton and Lathrop on the east side of the San Joaquin Valley, and reparation prior to February 28, 1927, only to points south of Tracy on the west side of the San Joaquin Valley. The Oakland Chamber of Commerce intervened in behalf of complainant and the Sperry Flour Company and Grangers Business Association in favor of the continuance of the present adjustment of rates.

Public hearings were held before Examiner Geary and the case having been duly submitted and briefs filed by interested parties is now ready for our opinion and order.

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Rates will be stated in cents per 100 pounds, and the term east side of the San Joaquin Valley as used herein refers to the territory south of Stockton and Lathrop via Merced to and including Lerdo, and the term west side to points south of Tracy via Newman to but not including Fresno.

Complainant manufactures various kinds of feeds and grain products at its Oakland mill in competition with mills located at numerous points in California, its principal competitor being the Sperry Flour Company, with a mill at South Vallejo manufacturing commodities similar to those of the complainant.

The South Vallejo and Oakland grain rates have been before this Commission on different occasions in formal proceedings and the present rates reflect those prescribed in *Albers Brothers Milling Company* vs. *The Southern Pacific Company*, Case No. 1463, decided June 1, 1921, 20 C. R. C. 1, and as supplemented March 6, 1922, 21 C. R. C. 302; Case No. 2125, decided March 3, 1926, 27 C. R. C. 684, and as supplemented February 8, 1927, 29 C. R. C. 366. Case No. 1463 involved primarily the adjustment to Oakland and South Vallejo from the Sacramento, San Joaquin and Salinas valleys, and there were prescribed in that case certain differentials between South Vallejo and Oakland depending upon distances. In Case No. 2125 rates were set which would remove undue discrimination against Oakland and undue preference to Sacramento found to exist at points on the west side. The gist of the present case involves the relative adjustment of the rates on grain and its products from Oakland as compared with the rates from South Vallejo to points in the San Joaquin Valley. Both complainant and defendant are agreed that in the instant proceeding there is presented for consideration for the first time the relative adjustment of the rates from South Vallejo and Oakland as distinguished from the adjustment to those points.

The history of the grain rates from San Joaquin Valley points to South Vallejo and Port Costa and the elements of the competition from the water-borne grain influencing their structure are set forth in the previous Albers Brothers cases, and it would serve no purpose to reiterate here in detail this history other than to outline the relative adjustment of the rates as an outgrowth of the cases above referred to. In Case No. 1463, *supra*, the rates to Oakland were made one-half cent and one cent higher than the rates applicable to Port Costa, depending upon distances, and South Vallejo was placed upon the Port Costa basis. In Case No. 2125, *supra*, rates were prescribed placing the Oakland rates from points on the west side upon a basis no higher than the rates from the same points to Sacramento, this because of the equality of mileages. The Sacramento rates being generally of the same volume as those existing to South Vallejo, the

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practical effect has been that Sacramento, South Vallejo and Oakland since February 28, 1927, when carrier complied with order in Case No. 2125, have been on the same basis to points on the west side of the valley. On the east side the rates from South Vallejo are one-half cent to one cent less than Oakland, although the hauls are approximately 24 miles greater from South Vallejo than from Oakland.

South Vallejo is on the Suisun-Fairfield branch and Oakland on the main line of the Southern Pacific Company. A witness from the operating department of the defendant outlined in detail the handling of the traffic from South Vallejo and Oakland. It is of record that a greater transportation service is performed by defendant from South Vallejo to points on the east side than is performed from Oakland although the Oakland rates are higher than those from South Vallejo. When originally established, because of the competitive conditions existing between South Vallejo and Port Costa, as fully described in the previous Albers Brothers cases, South Vallejo was placed upon the Port Costa basis and Port Costa being a shorter distance to points in the San Joaquin Valley than Oakland and involving a less transportation service, accounts for the South Vallejo rates being less than those applicable at Oakland. Defendant and complainant stipulate that there is no movement of grain or grain products via water carriers from South Vallejo or Oakland to points in the San Joaquin Valley. A witness for defendant on cross-examination admitted that under the present day conditions there could be no justification for lower rates from South Vallejo than from Oakland to points involved in this complaint, and defendant in its brief offered no convincing argument in justification of the continuance of the present adjustment.

The following is representative of the rates and distances from South Vallejo and Oakland to points on the east side of the San Joaquin Valley.

To	From Oakland Distance	From Oakland Rate	From South Vallejo Distance	From South Vallejo Rate
Oakdale	117	11½	139	10½
Manteca	80	9½	104	8½
Modesto	96	12½	120	11½
Turlock	109	14½	134	13½
Merced	134	17	158	16
Fresno	189	19½	213	18½
Visalia	230	21	254	20½

By the short line distances there is approximately a 24-mile greater haul from South Vallejo to points on the east side than is involved from Oakland.

Complainant bases its allegation of unreasonableness of the Oakland rates almost solely upon a comparison of rates applicable from South Vallejo, but it offered no convincing evidence or testimony in support of the contention that the Oakland rates were in and of themselves

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reasonable. Defendant submitted exhibits comparing the present grain rates from Oakland with those applicable in and between other states for comparable distances and particularly with the distance scale prescribed by the Interstate Commerce Commission for application in the southwestern territory (*Corporation Commission of Oklahoma* vs. *Abilene and Southern Railway et al.*, 101 I. C. C. 116), and refers to the fact that this latter scale was offered by complainant in Case No. 2325, *Albers Bros. Milling Company* vs. *Southern Pacific Company*, decided December 23, 1927, Decision No. 19159, as a reasonable maximum one for application between these points in California. The rates from Oakland to territory here involved are now generally lower than those prescribed in the Corporation Commission of Oklahoma case and are also lower for equal distances than the comparable rates shown in exhibits of defendant.

As heretofore stated, the grain rates applicable at Port Costa and South Vallejo were influenced by water competition, and by water competition is not meant the actual physical movement by rail from the point of production to South Vallejo or to Port Costa, but has reference to the competition which the grain produced at interior points distant from the water must meet in reaching the consuming, marketing, or ocean shipping points. Comparison of rates and other tokens of rate making clearly shows on this record that the grain rates applying to Port Costa and South Vallejo were depressed originally by the water competition and today reflect this adjustment, and they are lower in almost every instance than any scales introduced as exhibits.

Attention is directed to the fact that the class rates and the flour commodity rates from South Vallejo are the same as those from Oakland.

After full consideration of all the facts of record we are of the opinion and so find that upon this record none of the rates on grain and articles taking the same rates from Oakland to points south of Tracy, Lathrop and Stockton to and including Lerdo are unreasonable *per se*, but for the future that the rates from Oakland to points south of Lathrop and Stockton via the east side of the San Joaquin Valley through Merced to and including Lerdo will be unduly preferential to South Vallejo and unduly prejudicial and discriminatory to Oakland to the extent they exceed the rates contemporaneously in effect from South Vallejo.

Complainant requests an award of reparation, apparently upon the theory that having met the prices of its competitors it was automatically damaged in amounts measured by the difference in the rates paid and rates accorded its competitors. However, where rates are found to be unduly preferential, prejudicial and discriminatory but not un-

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reasonable, the burden of proof is upon complainant to establish by competent evidence that it has been actually damaged and that the damage suffered, if any, was the direct result of the discriminatory and prejudicial rate adjustment. It can not be presumed that the amount of damage is the difference between the rate paid and the rate established by the Commission; it may be greater or less, but whatever it is must be actually proved by competent evidence before recovery can be had. There is no evidence in this record to show that complainant was damaged, and therefore reparation is denied. *Pennsylvania Railroad Co.* vs. *International Coal Co.*, 230 U. S., 184. *Los Angeles County* vs. *Pacific Electric Ry. Co.*, 27 C. R. C. 337, 342, and 28 C. R. C. 143. *Turner* vs. *Pacific Electric Ry.*, 27 C. R. C. 404, 408, and *Vernon Oil Refining Company* vs. *Pacific Electric Railway Co.*, 27 C. R. C. 442, 446. *Coal Switching Reparation Cases* at Chicago, 36 I. C. C. 226. *C. D. Park* vs. *L. and N. Railroad*, 55 I. C. C. 703. *Carnegie Steel Co.* vs. *Director General*, 96 I. C. C. 527, and cases cited therein.

The adjustment made in this proceeding is without prejudice to any finding in Case No. 2323, an investigation on this Commission's own motion involving the general level of all rates on grain and grain products between points in California, which proceeding is corelated with Docket No. 17000, part 7, of the Interstate Commerce Commission.

ORDER.

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and basing this order upon the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that defendant, Southern Pacific Company, be and it is hereby directed to cease and desist on or before forty-five days from the date of this order and thereafter to abstain from publishing, demanding or collecting for the transportation of grain and articles taking the same rates in carloads, as described in Southern Pacific Tariff 793–B, C. R. C. 2487, from Oakland to points south of Lathrop and Stockton via Merced, to and including Lerdo, rates which exceed those contemporaneously in effect from South Vallejo to the same destinations.

It is hereby further ordered, that defendant, Southern Pacific Company, be and it is hereby directed to establish on or before forty-five days from the date of this order on notice to the Commission and the general public by not less than five days' filing and posting in the manner required by law and thereafter to maintain and apply for the transportation of grain and articles taking the same rates in carlods

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as described in Southern Pacific Tariff 793-B, C. R. C. 2487, rates from Oakland which shall not exceed the rates contemporaneously in effect from South Vallejo.

Dated at San Francisco, California, this twenty-third day of January, 1928.

DECISION No. 19296.

IN THE MATTER OF THE APPLICATION OF FEATHER RIVER POWER COMPANY, A CORPORATION, ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF CALIFORNIA, FOR AN ORDER PERMITTING SAID CORPORATION TO ISSUE AND SELL ITS CLASS "B" PREFERRED STOCK AND COMMON STOCK TO THE AGGREGATE PAR VALUE OF ONE MILLION TWO HUNDRED FORTY-FIVE THOUSAND DOLLARS.

Application No. 14287.

IN THE MATTER OF THE APPLICATION OF FEATHER RIVER POWER COMPANY, A CORPORATION, ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF CALIFORNIA, FOR AN ORDER PERMITTING SAID CORPORATION TO ISSUE AND SELL ITS COMMON STOCK TO THE AGGREGATE PAR VALUE OF THIRTEEN THOUSAND TWO HUNDRED DOLLARS.

Application No. 14303.

Decided January 26, 1928.

SECURITY ISSUES—STOCK.—Feather River Power Company authorized to issue and sell at not less than par $13,200 of common stock to pay organization expenses and to issue and sell at not less than 90 per cent of face value $792,700 of common stock, and $153,900 of 7 per cent cumulative Class "B" preferred stock to pay cost of construction.

ACCOUNTING—ACCOUNTS TO WHICH PARTICULAR ITEMS CHARGEABLE.—While applicant's balance sheet showed the discount on its bonds and stock, it did not include under such discount expenses incurred in connection with a bond issue. "If such expenses are included in the amount paid to the contractor they should, when the cost of the plant is distributed to the fixed capital accounts, be transferred to debt discount and expense in accordance with the uniform system of accounts for electrical corporations."

Robert M. Searls, for Applicant.

BY THE COMMISSION.

OPINION.

In Application No. 14287 Feather River Power Company asks permission to issue and sell at not less than 90 per cent of its par value $1,245,000 of its Class "B" 7 per cent cumulative preferred stock and common stock, to pay in part the cost of its Buck's Creek power project, hereinafter referred to.

In Application No. 14303 the Feather River Power Company asks permission to issue, at not less than par, $13,200 par value of its common capital stock to pay preliminary organization expenses.

By Decision No. 15394, dated September 15, 1925, as amended by Decision No. 15465, dated September 25, 1925, the Commission author-

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ized Feather River Power Company to issue $5,500,000 of first mortgage 6 per cent serial bonds dated January 1, 1926, and $2,100,000 of stock, divided into such classes as applicant may determine, to pay the estimated cost of its Buck's Creek power plant and project, more particularly described in exhibits filed in Application No. 11414. The company elected to issue $1,000,000 of Class "A" 7 per cent preferred stock, $1,000,000 of Class "B" 7 per cent preferred stock, and $100,000 of common stock.

The Feather River Power Company has an authorized stock issue of $4,000,000 divided into $1,000,000 of common, $2,000,000 of Class "B" 7 per cent preferred, and $1,000,000 of Class "A" 7 per cent cumulative preferred. The amount of stock and bonds outstanding is shown in the following balance sheet which is as of November 1, 1927:

Assets.

Organization		$300 00
Construction cost Buck's Creek project to date paid on account of general construction contract dated October 30, 1925		5,765,641 23
Paid account organization and engineering prior to commencement of work		84,383 00
Interest paid by corporation from bond proceeds		268,583 00
Due and payable out of unsold stock proceeds		391,880 43
Cash		805,812 17
In hands of trustees	$805,775 77	
In bank balance from Decision No. 15672	36 40	
Discounts		769,380 00
Class A preferred stock	$100,000 00	
Class B preferred stock	100,000 00	
Common stock	19,380 00	
Six per cent serial bonds	550,000 00	
Total assets		$8,085,980 43

Liabilities.

Class A preferred stock outstanding	$1,000,000 00
Class B preferred stock outstanding	1,000,000 00
Common stock outstanding	194,100 00
First mortgage six per cent serial gold bonds	5,500,000 00
Construction deficit to be met from proceeds of stock sales when authorized	391,880 43
Total liabilities	$8,085,980 43

The cash ($805,775.77) in the hands of the trustee represents proceeds from the sale of bonds, and is available to pay the cost of applicant's project. While applicant's balance sheet shows the discount on its bonds and stock, it does not include under such discount the expenses incurred in connection with the bond issue. If such expenses are included in the amount paid to the contractor they should, when the cost of the plant is distributed to fixed capital accounts, be transferred to debt discount and expense in accordance with the uniform system of accounts for electrical corporations.

R. C. Storrie and Company have agreed to build applicant's hydro-

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electric plant at a cost of $7,691,889. A copy of the revised contract between Feather River Power Company and R. C. Storrie and Company is on file in Application No. 11414. It is alleged that R. C. Storrie and Company have expended up to October 31, 1927, $7,021,437.40. According to applicant's balance sheet it has paid R. C. Storrie and Company $5,765,641.23. From the evidence submitted, we are not satisfied that there has been actually expended on this project $7,021,437.40, and while a statement of the expenditures of R. C. Storrie and Company has been filed in this proceeding, it should not be concluded that by referring to such statement of expenditures that the Commission approved the same.

The evidence submitted shows that the cost of applicant's hydro-electric project will exceed the original estimate, and likewise the contract price. The reasons for the additional cost are, first, due to the changes in the design of the hydro-electric plant and appurtenances, and second, to unforeseen difficulties in construction which lengthened the construction period. We do not believe that it is necessary to comment in detail upon the added costs. At this time the company states that it is merely asking authority to issue sufficient additional stock to cover the contract price, namely, $7,691,889. The Commission has heretofore authorized applicant to issue $5,500,000 of bonds and $2,100,000 of stock. This order provides that such bonds and stock shall be sold for not less than ninety, netting the company $6,850,000 or $851,889 less than the contract price. The reasons for not authorizing securities sufficient to cover the contract price are set forth in Decision No. 15394.

In Application No. 14287 the company asks permission to issue $1,245,000 of stock which, added to the stock and bonds heretofore authorized, makes a total of $8,845,000. If that amount of securities is sold at ninety, the proceeds amount to $7,960,500 or $268,611 more than the contract price. To realize the $851,889 mentioned through stock sold at ninety calls for an additional issue of $946,600. This additional issue, we believe, should be represented by $792,700 of common and $153,900 of Class "B" cumulative preferred. By authorizing the issue of the additional stock we do not approve the costs of applicant's project as reported in Exhibit "A" and Exhibit "C" filed in Application No. 14287.

Applicant's request in Application No. 14303 to issue $13,200 of stock to pay organization expenses will be granted.

ORDER.

Feather River Power Company having asked permission to issue $1,258,200 of stock, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the money,

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property or labor to be procured or paid for by the issue of $959,700 of stock is reasonably required for the purposes herein indicated and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income, and that Application No. 14287 in so far as it involves the issue of $298,500 of stock should be dismissed without prejudice; therefore,

It is hereby ordered, as follows:

1. Feather River Power Company may issue and sell at not less than par $13,200 of common stock for the purposes set forth in Application No. 14303.

2. Feather River Power Company may issue and sell at not less than 90 per cent of its par value $792,700 of common stock and $153,900 of 7 per cent cumulative Class "B" preferred stock and use the proceeds to pay in part the cost of constructing its Buck's Creek power project and plant, referred to in this proceeding.

3. Application No. 14287, in so far as it involves the issue of $298,500 of stock, be and the same is hereby dismissed without prejudice.

4. Feather River Power Company shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

5. The authority herein granted to issue stock will become effective upon the date hereof.

Dated at San Francisco, California, this twenty-sixth day of January, 1928.

DECISION NO. 19300.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA TRANSIT COMPANY, A CORPORATION, (a) TO CHANGE ITS ROUTE BETWEEN MANTECA AND RIPON, (b) TO CHANGE ITS ROUTE BETWEEN STOCKTON AND GALT, (c) TO CHANGE ITS ROUTE BETWEEN COLLEGEVILLE AND OAKDALE, (d) TO CHANGE ITS ROUTE BETWEEN TRACY AND MOSSDALE, (e) TO SUSPEND OR ABANDON ITS OPERATIVE RIGHTS BETWEEN LOS BANOS AND CHOWCHILLA, (f) TO SUSPEND OR ABANDON ITS OPERATIVE RIGHTS BETWEEN FRESNO AND LEMOORE VIA ELM AVENUE, (g) TO SUSPEND ITS OPERATIVE RIGHTS BETWEEN SAUGUS AND LANCASTER VIA BOUQUET CANYON, (h) TO CHANGE ITS ROUTE BETWEEN KEYSTONE AND SONORA AND (i) TO CHANGE ITS ROUTE BETWEEN KEYSTONE AND CARL INN.

Application No. 13428.

Decided January 30, 1928.

OPERATIVE RIGHTS—REROUTING—ABANDONMENT.—California Transit Company authorized to reroute and amend various portions of its operations, consolidating new routes with existing service, and to abandon certain routes.

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Earl A. Bagby, for Applicant.
H. W. Hobbs, for Southern Pacific Co. and Central California Traction Co., Protestants.
C. N. Hamblin, for Sierra Railway Co., Protestant.

BY THE COMMISSION.

OPINION.

The California Transit Company, a corporation, conducts an automobile stage service for the transportation of persons and property over various routes within the State of California and by this application requests permission to effect changes in certain routes and to abandon others. Nine distinct matters are embraced within the scope of the application and these will be considered in the order of their presentation. Applicant also prays that such new routes as may be granted herein be consolidated with its existing routes and operated under its tariffs, schedules and rules now on file with this Commission.

The granting of the application was protested in its entirety by Southern Pacific Company whose attorney also entered an appearance on behalf of Central California Traction Company.

Public hearings on this application were held before Examiner Gannon at San Francisco, at which time the matter was submitted and is now ready for decision.

We present herewith the various phases of the application:

I.

Applicant alleges that in the conduct of one of its main line operations between San Francisco and Los Angeles the route originally followed between Manteca and Ripon was via Calla school and thence back to the main highway at Calla crossing; that approximately three years ago upon the completion of the new highway applicant, with the permission of the Railroad Commission, discontinued the routing of its southbound stages by way of Calla school and routed them direct from Manteca to Calla crossing, thus shortening the distance by approximately one mile. The Southern Pacific Company protested the granting of this feature of the application, contending that it is in effect an application for a new certificate of public convenience and necessity filed under the guise of a rerouting. We do not view it in that light. Resolved into mathematical terms it simply means the traversing of the long side of a right-angled triangle rather than the two short sides and upon improved highway over the entire distance. The testimony shows that there is no demand for continued service via Calla school, hence no ground for protest on that score can be advanced. There appearing sufficient reason for the rerouting as prayed for this portion of the application will be granted.

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II.

The next feature of the application involves operative rights between Stockton and Sacramento with particular reference to Lodi service. Applicant alleges that because of various changes and conditions necessitating increased and different stage operations over this route it did, on March 22, 1926, make written application to the Railroad Commission for permission to change the route for a portion of the service between Stockton and Sacramento, with particular reference to the service to be furnished Lodi and Woodbridge, and received permission to make such change by informal letter of March 25, 1926. The letter referred to authorized applicant to establish new through schedules between Stockton and Forest Lake over Cherokee Lane road omitting service to Lodi except for flag stop on the main highway, and also between the same points via Henderson and Lodi with service to the latter point. Applicant alleges that since receiving said permission from the Railroad Commission it has conducted its operations as follows: (1) via Cherokee Lane road from Forest Lake to Lodi, via Henderson, to Stockton and reverse; (2) via Forest Lake to Woodbridge to Lodi, to Henderson, and Stockton and reverse; (3) via Cherokee Lane road to Forest Lake, to Stockton direct and reverse with no service to Lodi except on flag stop. It should be noted that at the time of receiving notice as above referred to Henderson, Woodbridge and Lodi were served by all stages of applicant.

Applicant now asks the Commission to grant it a certificate of public convenience and necessity to operate over each of the above routes. This feature of the application was vigorously protested by Southern Pacific Company upon the assumption that California Transit Company never had the right to serve Lodi and that authority so to do could only be granted upon full showing, in an appropriate proceeding, as to the necessity for such service. This protestant in its own behalf, as well as in behalf of Central California Traction Company, endeavored to show by oral testimony and exhibits that Lodi was now being adequately served by these two rail lines. We have made a careful examination of the files and records of this Commission and submit herewith an outline of the developments which lead up to the exercise of this right by applicant.

The original right to serve Lodi was held by Star Auto Stage Association by reason of its good faith operation prior to May 1, 1917. Acting in accordance with General Order No. 47 Star Auto Stage Association filed its tariffs and time schedules in February, 1917, and in these original tariff filings Lodi appears as an intermediate point to be served. Service was actually given to Lodi under this tariff and apparently has been rendered uninterruptedly ever since. Lodi also appears in a subsequent tariff of Star Auto Stage Association filed in March,

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1918. Lodi next appears as an intermediate point between Sacramento and Stockton in a supplement to California Transit Company's tariff filed September 3, 1921. The next tariff filing of applicant company on July 22, 1922, also shows Lodi as a point to be served, and continuously thereafter Lodi is included in tariff filings.

By virtue of Decision No. 7795, Application No. 5162, the operative rights of Star Auto Stage Association over the route from Stockton to Walnut Grove, on which line Lodi had appeared as an intermediate point prior to the jurisdiction of the Commission, were transferred to E. M. Huston who was directed to file tariffs and schedules covering operations over this route. This route was finally disposed of to another operator and reference to the decision is made herein merely for the purpose of pointing out that Lodi was served by the Star Auto Stage Association on the Walnut Grove local run as well as on the Stockton to Sacramento route. In Decision No. 8150, Application No. 5163, authority was given to Star Auto Stage Association to tranfer all of its operative rights to Star Auto Stage Company and included the operation between Stockton and Sacramento with service to Lodi as an intermediate point. Star Auto Stage Company subsequently had its name changed to California Transit Company, the applicant herein, so that whatever rights were held by the old association are now owned and controlled by applicant.

We believe the decisions and tariff filings above referred to unquestionably establish applicant's right to serve Lodi as a point on its operative right between Stockton and Sacramento.

The other question to be determined is as to applicant's right to operate its stages between Lodi and Forest Lake over the Cherokee Lane road, a distance of six miles, which route is now used in conformity with informal authority granted by the Commission in its letter to applicant of March 25, 1926. Since operation over this route permits of through service over an improved highway it is clearly in the public interest that it be continued. Accordingly we shall find that public convenience and necessity require the operation of applicant's stages over the Cherokee Lane road between Forest Lake and Lodi on its service direct to Stockton.

III.

The application of California Transit Company further recites that as the result of Decision No. 16012, Application No. 12524, it acquired the operative rights of Yosemite Transit between Stockton and Oakdale, and that stage service over such route had been conducted by its predecessor both via Valley Home and Escalon. There having arisen some question as to the inclusion of the Escalon route in the transfer to Yosemite Transit, applicant now requests a certificate of public con-

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venience and necessity to operate a portion of its service via Escalon. Protestant Southern Pacific Company challenges applicant's right to serve Escalon and demands that it make the usual showing of public convenience and necessity. An examination of Decision No. 7795, above referred to, discloses that there was transferred back to R. R. Young certain prior operative rights which he had theretofore transferred over to the old Star Auto Stage Association; that in delineating the routes from Stockton to Groveland so transferred no mention is made of the Escalon route though the Valley Home route is described in some detail. The omission may be accounted for by the fact that for several years the Escalon route was practically impassible and had to be abandoned on account of bad roads. This condition continued until 1922 when the road was improved and Young resumed operation over the Escalon route and service over that route has been continuously rendered since that time. Applicant's contention is that there were two separate and distinct prior rights, one by way of Escalon, and one by way of Valley Home, both acquired by Young from the old association and subsequently by him transferred to applicant. From the language of the decision we are not quite clear as to just what it was intended to convey, nor do the tariff filings throw much light on the situation. It may be true that two routes between Stockton and Groveland and Stockton and Sonora are designated, and that one route failed to include Escalon, but the language of the decision unquestionably admits of two different constructions. However, we feel that sufficient showing has been made herein to justify the issuance of a certificate of public convenience and necessity to permit the routing of a portion of applicant's service via Escalon and the order will so show.

IV.

The next portion of the application here being considered deals with the route between Tracy and Mossdale originally acquired by applicant from Star Auto Stage Association. Applicant alleges that operation over this route had formerly been conducted by way of Banta but that owing to a realignment of the highway Banta has been eliminated from the main traveled road, and it is therefore desired that authority be granted to route all stages over the new road. Applicant has been operating over the new route for three years last past upon oral permission from the Commission, so it alleges. We can see no objection to the granting of this request. The new route eliminates a bad situation at Banta where it was with some difficulty that stages could be manipulated around sharp corners and curves. It shortens the distance and traverses a more direct route. The testimony shows that there is no occasion to serve Banta and that there has been no com-

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plaint from that community in three years of operation over the new route. The application will be granted.

V.

Applicant next refers to the route between Fresno and Los Banos via Chowchilla, an operation sanctioned by this Commission in its Decision No. 14886 on Application No. 10680, and now requests authority to abandon its operative rights between Los Banos and Chowchilla. Upon representations made by applicant in a letter dated July 1, 1926, that there was no demand for service between these two points, this Commission granted applicant authority to suspend, temporarily, such service until December 31, 1926. It appears from the testimony that the route was originally operated with the hope in view that there might be some demand developed for service between the Merced-Fresno highway and certain Pacific coast points via Los Banos, but this route was not then developed and local service over the route in question was not self-sustaining. An exhibit introduced in evidence shows as the result of a check by applicant covering a period of 28 days that only ten passengers used the route in either direction, the operating revenue being less than one cent per mile. These could have been taken care of either via Fresno or Merced. It is contended that the only effect of this order, if granted, would be the suspension of the operation from Chowchilla to Chowchilla road junction, a distance of 12 miles through a cattle range country, the remainder of the route being served under other operative rights. We find no objection to the granting of the request and the order will show that authority is given applicant to abandon this service.

VI.

Another feature of the application has to do with service between Fresno and Lemoore via Elm avenue, a right acquired by applicant from Pickwick Stages System. The application recites that this Commission granted authority to applicant to temporarily suspend said service, upon a proper showing, and that circumstances now require the further suspension or abandonment of the route in question. The evidence indicates that this portion of the route acquired by applicant from Pickwick Stages has never produced sufficient revenue to make it a profitable operation and its withdrawal would work no hardship since the territory is otherwise adequately served. Service to Armona and Lemoore is now rendered by applicant on its Hanford to Coalinga right, which parallels the Elm avenue route, at a distance of five or six miles, from Fowler to Hanford.

There appears to be good reason for this change and the order fol-

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lowing will authorize applicant to abandon operation of its service between Fresno and Lemoore via Elm avenue.

VII.

It is further alleged in the instant application that applicant acquired from Motor Transit Company an operative right for the transportation of persons and property between Los Angeles and Mojave via Bouquet Canyon. As in other instances above cited, upon written application to the Commission applicant was given permission to temporarily suspend the operation via Bouquet Canyon and now seeks authority for further suspension for the period of one year. Temporary suspension was authorized upon a showing that operation over the alternative Mint Canyon route was desirable and was being regularly rendered by applicant. A 30 day check during May and June of 1926 showed an average daily revenue of $2.73 derived from a daily average of 1.66 passengers. According to the testimony the road via Bouquet Canyon is rough and mountainous and not well adapted to stage travel while Mint Canyon has a paved state highway and is the logical route through from Saugus to Lancaster. We regard the route by way of the Bouquet Canyon as more or less of a duplication of the Mint Canyon service and over a road infinitely less desirable for public travel. The evidence warrants a permanent abandonment of applicant's operative rights between Saugus and Lancaster via Bouquet Canyon and this will be included in the final order.

VIII.

The next feature of the application involves operative rights between Keystone and Sonora and the abandonment of Chinese Camp on this run for the more direct route from Yosemite Junction north. The record shows that originally service between Keystone and Sonora was rendered both via Chinese Camp and direct, but that eventually the Chinese Camp route was abandoned. The situation here presented is similar to the Manteca-Ripon route under "I" and involves the traversing of the long side of a right-angled triangle rather than the two short sides. The distance from Yosemite Junction to Chinese Camp is 3.7 miles and from Chinese Camp back again to the main highway is 3.6 miles while the more direct route from the point of departure back to the highway is 3.1, a saving of over 4 miles, in addition to an improved road condition. It is alleged in the application that temporary authority was given applicant's predecessor in interest to operate over the direct route and that the improvement of the route some two years ago made that the more feasible and practicable route for future travel. There can be no complaint from Chinese Camp because that point will continue to be served more adequately by way

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of Yosemite Junction to Sonora and by Groveland service in the opposite direction. The only true abandonment would be the 3.6 miles between Chinese Camp and the main highway. A careful review of the evidence and exhibits convinces us that the operation here asked for is desirable and accordingly a certificate of public convenience and necessity will issue.

IX.

The next change of route requested by applicant is a deviation on its Keystone to Carl Inn route so as to give service to Moccasin Creek. Temporary authority was given in 1923 to Yosemite Transit, the then owner of the route, to temporarily deviate from its course and give service to Moccasin Creek, where there had recently been established a large power plant, at the same time routing other of its stages through and avoiding service to Moccasin Creek. There is no railroad or other service to this point and obviously there is need for some sort of transportation for laborers and supplies.

We can see no objection to the operation here sought and in fact believe that the alternative route asked for is not only desirable but necessary. Accordingly, the order will show that public convenience and necessity require the granting of the certificate here prayed for.

Applicant finally requests that the new and changed routes herein granted should be consolidated with its existing rights and operated under the tariffs, schedules, rates and rules of applicant now on file with this Commission. This prayer of the applicant will be granted, the Commission being of the opinion that such changes as are herein authorized will result in greatly improved service to the traveling public.

ORDER.

A public hearing having been held in the above entitled application, the matter having been submitted and the Commission being now fully advised and basing its order on the findings of fact which appear in the foregoing opinion:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by California Transit Company of automobile stage service over the following routes:

I. Between Manteca and Ripon via Calla crossing direct instead of via Calla school;

II. Between Stockton and Sacramento by way of the following routes: (a) via Forest Lake to Woodbridge, to Lodi, to Henderson, to Stockton and reverse; (b) via Cherokee Lane road from Forest Lake to Lodi, to Henderson, to Stockton and reverse; (c) via Cherokee Lane

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road from Forest Lake to Stockton direct and reverse, omitting service to Lodi except for flag stop on main highway.

III. Between Stockton and Oakdale both via Valley Home and Escalon.

IV. Between Tracy and Mossdale via the direct new route instead of via Banta.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the abandonment by California Transit Company of automobile stage service over the following routes:

V. Between Fresno and Los Banos via Chowchilla;

VI. Between Fresno and Lemoore via Elm avenue;

VII. Between Los Angeles and Mojave via Bouquet Canyon.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the operation by California Transit Company of automobile stage service over the following routes:

VIII. Between Keystone and Sonora via Yosemite Junction and Jamestown direct instead of via Chinese Camp;

IX. Between Keystone and Carl Inn so as to route a portion of its service via Moccasin Creek by deviating from the main line at a point easterly of Setevens Bar and returning thereto at a point westerly of Priest's Station.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the consolidation of the new routes herein granted with the present existing routes of applicant to be operated under tariffs, schedules, rates and rules of applicant now on file with this Commission; and

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to California Transit Company for the establishment and operation of the services hereinabove described, subject to the conditions hereinafter set forth:

1. The operating rights herein authorized are not to be considered by California Transit Company as separate operating rights, but are to be operated in conjunction with and as a part of existing rights.

2. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

3. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, such tariff and time schedule supplements as are necessary to comply with this order and the Commission's Tariff Circular No. 79.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent

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of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this thirtieth day of January, 1928.

DECISION No. 19301.

IN THE MATTER OF THE APPLICATION OF SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA FOR AUTHORITY TO ISSUE AND SELL TWELVE MILLION DOLLARS PAR VALUE OF 4½ PER CENT FIRST MORTGAGE GOLD BONDS, SERIES 1968, SECURED BY ITS TRUST DEED AND MORTGAGE OF DATE SEPTEMBER 1, 1925.

Application No. 14358.

Decided January 31, 1928.

SECURITY ISSUES—BONDS.—Southern Counties Gas Company of California authorized to issue and sell on or before June 30, 1928, $12,000,000 of 4½ per cent first mortgage gold bonds, Series of 1968, to refund outstanding bonds, and reimburse treasury; and to issue and sell $12,000,000 of 4½ per cent temporary first mortgage gold bonds.

LeRoy M. Edwards, for Applicant.

BY THE COMMISSION.

OPINION.

Southern Counties Gas Company of California asks permission to issue and sell at 90½ per cent of face value and accrued interest $12,000,000 of 4½ per cent first mortgage gold bonds due May 1, 1968, for the purpose of paying and refunding its outstanding bonds and finance the cost of additions and betterments. The company also asks permission to issue and sell $12,000,000 of temporary bonds at the same price which are to be exchanged for definitive bonds as soon as the same are available for delivery. It further requests permission to amortize the unamortized discount on its present outstanding bonds and the premium which has to be paid to redeem the same, over the same period of time that the discount would have been amortized had the bonds not been paid.

Southern Counties Gas Company of California has outstanding $3,000,000 of common stock, $2,500,000 of 7 per cent cumulative preferred stock. In addition, it has outstanding $8,614,200 of first mortgage 5½ per cent bonds due May 1, 1936, and $2,500,000 of general and refunding mortgage 6 per cent bonds due May 1, 1945.

The total outstanding bonds are reported at $11,114,200. It is of rec-

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ord that the company's board of directors have passed a resolution calling for redemption on May 1, 1928, of all its outstanding bonds. The first mortgage bonds are redeemable at 102½ per cent of the principal and accrued interest, and the general and refunding mortgage bonds at 105 per cent of the principal and accrued interest. The cost to redeem the bonds will be $11,454,555.

The company asks permission to issue $11,114,200 of 4½ per cent bonds in place of the $11,114,200 of 6 per cent and 5½ per cent bonds now outstanding. In addition, it requests authority to issue $885,800 of 4½ per cent bonds to reimburse its treasury on account of the construction of additions and betterments. In Exhibit "D" it reports that it has expended for additions and betterments, against which no securities have been issued, the sum of $3,946,471.42. This expenditure was temporarily financed through the investment of moneys offset by the company's reserve for accrued depreciation and by the company's surplus.

In Exhibit "E" the company reports that it has expended from September 1, 1925, to November 30, 1927, inclusive, $4,771,874.46, against which no bonds have been issued by the company. We are of the opinion that the company's reported uncapitalized construction expenditures warrants the issue of $885,800 of bonds for the purpose of reimbursing its treasury.

The company's general and refunding trust deed and mortgage provides that upon the payment of applicant's outstanding 5½ per cent first mortgage bonds, the bonds which may thereafter be issued under the general and refunding trust deed and mortgage may be designated as first mortgage bonds.

ORDER.

Southern Counties Gas Company of California having applied for permission to issue and sell $12,000,000 of bonds, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the money, property or labor to be procured or paid for by the issue of such bonds is reasonably required for the purposes herein authorized, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted as herein provided; therefore,

It is hereby ordered, as follows:

1. Southern Counties Gas Company of California may issue and sell on or before June 30, 1928, $12,000,000 of 4½ per cent first mortgage gold bonds, Series of 1968, (due May 1, 1968), and use $11,114,200 of said bonds or the proceeds obtained from the sale of such bonds, to pay or refund the outstanding bonds referred to in the foregoing

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opinion, and use $885,800 of said bonds or the proceeds obtained from the sale of such bonds, to reimburse its treasury on account of income expended for additions and betterments described in Exhibits "D" and "E."

2. Southern Counties Gas Company of California may issue and sell on or before June 30, 1928, $12,000,000 of 4½ per cent of temporary first mortgage gold bonds, Series of 1968, said temporary bonds to be exchanged for definitive bonds as and when the same are available for delivery and shall use said temporary bonds or the proceeds therefrom for the purposes stated in subdivision one of this order.

3. The Southern Counties Gas Company of California may amortize the unamortized discount and expense on its bonds now outstanding, together with the premium which must be paid in connection with the payment or refunding of such bonds, on or before September 1, 1968, provided that the authority herein granted to amortize said discount and premium on or before September 1, 1968, shall not be construed as an obligation on the Commission to consider said discount, expense and premium as a part of the cost of the moneys obtained through the issue of the $12,000,000 of bonds.

4. The authority herein granted will become effective when Southern Counties Gas Company of California has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $886.

5. Southern Counties Gas Company of California shall keep such record of the issue and sale of the bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this thirty-first day of January, 1928.

DECISION No. 19304.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING APPLICANT TO ISSUE AND SELL TO NATIONAL CITY COMPANY (A NEW YORK CORPORATION) TWENTY MILLION DOLLARS FACE AMOUNT OF APPLICANT'S FIRST AND REFUNDING GOLD MORTGAGE BONDS OF SERIES "E," AND TO USE THE PROCEEDS FOR THE PURPOSES SET FORTH HEREIN.

Application No. 14387.

Decided February 3, 1928.

SECURITY ISSUES—BONDS.—Pacific Gas and Electric Company authorized to issue and sell at not less than 96 per cent of face value plus accrued interest

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$20,000,000 of first and refunding mortgage gold bonds Series "E" bearing interest at 4½ per cent per annum, and to use proceeds to pay in part for properties of Coast Valleys Gas and Electric Company and Western States Gas and Electric Company.

W. B. Bosley, C. P. Cutten and *R. W. DuVal*, for Applicant.

BY THE COMMISSION.

OPINION.

Pacific Gas and Electric Company asks permission to issue and sell at 96 per cent of their face value and accrued interest, $20,000,000 of 4½ per cent first and refunding mortgage gold bonds of Series "E" due June 1, 1957, and use the proceeds to pay in part for the properties of Western States Gas and Electric Company, hereinafter sometimes referred to as Western Company of California, and Coast Valleys Gas and Electric Company, hereinafter sometimes referred to as Coast Valleys Company.

The testimony shows that on January 23, 1928, Western Company of California had outstanding 67,500 shares ($6,750,000 par value) of 7 per cent preferred stock, and 39,815 shares ($3,981,500 par value) of common stock; that Western States Gas and Electric Company of Delaware had outstanding 21,250 shares ($2,125,000 par value) of 7 per cent preferred and 35,300 shares ($3,503,000 par value) of common stock; and that Coast Valleys Company had outstanding 20,772 shares ($2,077,200 par value) of 7 per cent preferred, 4,190 shares ($419,000 par value) of 6 per cent preferred, and 30,000 shares ($3,000,000 par value) of common stock.

The following tabulation (Exhibit "A") shows the amount of stock of each company outstanding and the amount owned by Pacific Gas and Electric Company at the close of business on January 23, 1928:

Company	Shares owned by public	Shares owned by Pacific Company	Shares owned by Western Company of Delaware	Total shares issued
Coast Valleys Company:				
Preferred—7%	1,247½	19,524½		20,772
Preferred—6%	4,190			4,190
Common		30,000		30,000
Total	5,437½	49,524½		54,962
Western Company of California:				
Preferred—7%	3,384	42,866	21,250	67,500
Common		7,515	32,300	39,815
Total	3,384	50,381	53,550	107,315
Western States Gas and Electric Company of Delaware:				
Preferred—7%	4,924	16,326		21,250
Common	1,050	33,980		35,030
Total	5,974	50,306		56,280

The testimony of A. F. Hockenbeamer, president of the Pacific Gas and Electric Company, shows that as of January 30, 1928, Pacific

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Gas and Electric Company owned or controlled approximately 91 per cent of the outstanding stock of Western Company of California and Coast Valleys Company. His testimony further shows that as soon as practicable the properties of the Western Company of California and Coast Valleys Company will be transferred to applicant.

It is of record that the proceeds which the Pacific Gas and Electric Company will realize from the sale of the $20,000,000 of bonds will be paid to Western States Gas and Electric Company and Coast Valleys Gas and Electric Company as part consideration for the properties which those companies are to hereafter transfer to applicant. The proceeds from the bonds will be deposited with the trustees of the mortgages and deeds of trust of said Western Company of California and Coast Valleys Company and the trustees instructed to use said proceeds to redeem, pay and discharge the outstanding bonds and notes of Western Company of California and Coast Valleys Company.

The two companies mentioned have the following bonds outstanding:

Company	Name of issue	Interest rate	Due date	Amount outstanding with public
Coast Valleys Company	1st mortgage	6%	3/1/52	$1,808,000
Western Company of California	1st and refunding	5%	6/1/41	2,941,500
Western Company of California	1st and unifying	6%	3/1/47	8,850,000
Western Company of California	Gold notes	6%	10/1/37	5,000,000
				$18,599,500

Applicant's Exhibit No. 1 shows that Coast Valleys Company's bonds are callable at 105 and accrued interest. The Western Company's first and refunding mortgage bonds, now first mortgage bonds, are callable at 105 and accrued interest, the Western Company's first and unifying mortgage bonds at 107½ and accrued interest, and the Western Company's notes at 102½ and accrued interest. All of the notes and bonds, with the exception of Western Company's first and refunding bonds, have been called for redemption on March 1st. The first and refunding bonds of Western States are to be redeemed on June 1st, the earliest date at which they may be called for redemption. The cost of redeeming the bonds, to which reference has been made, will be $19,625,725. If applicant issues and sells $20,000,000 of 4½ per cent bonds at 96 it will realize $19,200,000, or $425,725 less than the amounts required to redeem the bonds above mentioned. The additional cash ($425,725) will be advanced by applicant from its cash on hand.

ORDER.

Pacific Gas and Electric Company having asked permission to issue and sell $20,000,000 of bonds, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by such issue

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is reasonably required by applicant for the purposes specified in this order and that such purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Pacific Gas and Electric Company may issue and sell on or before June 1, 1928, at not less than 96 per cent of face value, plus accrued interest, $20,000,000 face value of its first and refunding mortgage gold bonds, Series "E," to be dated June 1, 1927, to bear interest at the rate of 4½ per cent per annum, to become due on June 1, 1957, and to be callable on any interest payment date upon sixty days' prior notice to the holders of said bonds at 105 and accrued interest, if called on or before June 1, 1952, and thereafter at par and accrued interest.

It is hereby further ordered, that the Pacific Gas and Electric Company shall use the proceeds obtained from the sale of said $20,000,000 of bonds, other than accrued interest, to pay in part for the properties of the Coast Valleys Gas and Electric Company and Western States Gas and Electric Company, referred to in this application, and said companies shall in turn use said proceeds, or the equivalent, to pay, redeem and discharge in part the outstanding bonds and notes referred to in the foregoing opinion. The accrued interest may be used for general corporate purposes.

It is hereby further ordered, that the authority herein granted will become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $8,000.

It is hereby further ordered, that Pacific Gas and Electric Company shall keep such record of the issue, sale and delivery of the bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this third day of February, 1928.

DECISION No. 19305.

IN THE MATTER OF THE APPLICATION OF FONTANA DOMESTIC WATER COMPANY, A CORPORATION, FOR A HEARING UPON ITS INTERPRETATION AND ENFORCEMENT OF RULES AND REGULATIONS AN INVESTIGATION OF COMPLAINTS.

Application No. 13508.

Decided February 6, 1928.

SERVICE—WATER UTILITY—RULES AND REGULATIONS.—Rule of Fontana Domestic Water Company regarding water main extensions canceled and rescinded and new rule established.

CONTRACTS—SERVICE CONTRACTS—EXTENSIONS.—Arrangements entered into by and between purchasers of property and a real estate company, placing

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restrictions or conditions on right to receive public utility water service from a closely allied utility, other than requirements as provided in the utility's rules and regulations, are in no manner binding upon the utility, nor do they preclude any of its patrons from receiving service under its effective rules.

SERVICE—EXTENSIONS—DUTY TO MAKE EXTENSIONS.—All public utility water systems are required to make extensions of service to each and every bona fide applicant therefor within their dedicated areas, upon compliance by such applicant with the terms and conditions of reasonable rules and regulations which have been accepted for filing or established by the Commission.

SERVICE—CONDITIONS PRECEDENT TO SERVICE.—Any charges made by a water utility as a condition precedent to extensions of water service, which are not set forth in its rules and regulations, are irregular and improper and should be refunded.

SERVICE—EXTENSIONS—IN GENERAL.—" * * * transmission lines laid for the purpose of supplying subdivisions are not properly considered as extensions in so far as individual application for service therefrom is concerned." The piping of subdivisions is an entirely different matter from the extension of mains for individual consumers.

SERVICE—EXTENSIONS—REAL ESTATE SUBDIVISION.—In all cases in connection with the extension of water service to tracts of land to be subdivided and placed upon the market by a real estate company, the subdivider should be required to pay for the full initial cost of the piping of the subdivisions.

SERVICE—EXTENSIONS—RETURN OF CONSUMERS' DEPOSITS.—Deposits collected by a water utility other than those provided for in its rules and regulations should be refunded to the consumers either in cash or by way of credit on monthly bills of such consumers.

PLEADING AND PROCEDURE—SCOPE OF PROCEEDINGS.—While, in an application by a water utility for an interpretation of its rules and regulations, the utility will not be directed to make certain recommended refunds, should such refunds not be made within a reasonable time, necessary steps will be taken to insure full compliance with such recommendations.

Leonard, Surr and Hellyer, by *G. W. Hellyer* and *F. A. Leonard, Jr.*, for Applicant.
Emory B. Taylor, for certain Complainants.

BY THE COMMISSION.

OPINION.

Fontana Domestic Water Company, a corporation, applicant in the above entitled proceeding, is engaged in the public utility business of supplying water for domestic and other purposes to consumers in and in the vicinity of the town of Fontana, San Bernardino County, California. The application alleges in effect that the territory which applicant has endeavored to serve is a rural community which, within more recent years, has greatly developed and increased in population; that applicant has from time to time been extending its distribution system to supply water to new consumers and that in making the necessary extensions to its distribution system various problems have arisen as to the proper method of charging certain consumers for portions of the cost thereof not clearly provided for in its rules and regulations governing such extensions. It is further alleged that several complaints have been made by consumers and applicants for water service as to the interpretation placed by the company upon its rules and regulations in connection with the charges for extensions of service; wherefore, it is requested that the Commission investigate the conditions

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existing on the system and the complaints made by consumers and any persons whomsoever regarding the service of applicant and its interpretation and enforcement of its rules and regulations.

A public hearing in this matter was held at Fontana after due notice thereof had been given so that all interested parties might appear and be heard.

The Fontana Domestic Water Company, a corporation, was organized on or about the eighth day of March, 1923, by the Fontana Farms Company, a corporation engaged in the business of developing and selling for farming and residential purposes small parcels of land, in a total holding of about 17,000 acres which it owned or controlled. With the exception of qualifying shares for directors, the entire capital stock of the water company is owned by the Fontana Farms Company. The Fontana Domestic Water Company was organized primarily to deliver water for domestic and, to a limited extent, also for irrigation purposes to the residents of the unincorporated town of Fontana and to the purchasers of property from the Fontana Farms Company. Prior to the organization of this water company, the district was served with water by a distributing system owned by Fontana Farms Company and operated under lease by the Rialto Domestic Water Company. The lease expired in 1923 after which the properties reverted to the Fontana Farms Company which continued to supply water through the system without charge until a certificate of public convenience and necessity was granted to the Fontana Domestic Water Company by this Commission in its Decision No. 13268, dated March 14, 1924. Subsequent thereto, the company submitted to the Railroad Commission rates and also rules and regulations governing the relations of the utility with its consumers, which were accepted for filing on the twenty-sixth day of April, 1924. These rules so filed contained the following rule governing main extensions, which rule was in effect until amended in 1926.

No. 20—WATER MAIN EXTENSIONS.

The company will extend its water distribution main to new consumers at its own expense when the total length of main required is not in excess of 150 feet per consumer.

If the total length of main required is in excess of 150 feet per consumer, the consumer or consumers to be served will be required to advance that portion of the cost of such extension over and above the cost of the equivalent of 150 feet of main per consumer, and the money so advanced will be refunded in amounts equal to the cost of a 150-foot extension such as would normally be made free for each additional consumer whose service shall be taken off the first extension within a period of ten years for bona fide applicants from the making of the first extension, but in no case shall the refund exceed the original deposit.

Water main extensions may be made by special arrangement under the guarantee of definite minimum payments and upon private property under good and sufficient rights of way subject to the general rules and regulations of the Railroad Commission of the State of California in the territory where that Commission has jurisdiction.

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An amendment to the rules and regulations was accepted for filing on April 15, 1926, wherein the above Rule No. 20 was amended and modified as follows:

No. 20—WATER MAIN EXTENSIONS.

(A) To Individual Consumers.

First: The company will extend its water distribution mains to new consumers at its own expense when the total length of main required to connect to the nearest existing main of adequate capacity is not in excess of one hundred fifty (150) feet per consumer.

Second: If the total length of main required is in excess of one hundred fifty (150) feet per consumer, the consumers to be served will each be required to advance his pro rata share of the cost of such extension less the cost of the equivalent of one hundred fifty (150) feet of main for each such pro rata share, and the money so advanced will be refunded to them out of similar advances to be paid by future consumers connected to such extension, provided that no refunds shall be made to consumers already served after ten years from the date of the completion of any such extension.

(B) To Subdivisions.

The regulations given under section A of this paragraph No. 20 shall govern in the case of extensions to subdivisions as well as to individual consumers, with the following exceptions:

First: All extensions within the limits of the subdivision itself shall be paid for by the promoter or subdivider thereof, the actual work of laying such extensions to be done by the company or by a contractor acceptable to it and the size and quality of the pipe used to be acceptable to the company, and the money so paid to be refunded by the payment by the company of the equivalent of the cost of one hundred and fifty (150) feet of main for each bona fide consumer connected thereto within ten years from the date of completion of such extension.

Second: For such extensions as may be necessary to connect the nearest existing main carrying an adequate supply of water to the nearest point of a subdivision, the promoter or subdivider shall be required to advance the total cost of same and the money so paid shall be refunded to the subdivider out of payments to be made by future consumers connected to such main in the same manner as provided for individual consumers under subhead "A" above.

From the evidence, it appears that the area which the Fontana Domestic Water Company now serves and has undertaken to serve covers several square miles and is only sparsely settled. Most of the consumers reside on lots or parcels of land containing originally five, ten or twenty acres. Many of these tracts have since been cut up by the owners into smaller holdings. The result has been that the utility has been forced to install long sections of mains to serve a comparatively few consumers. In order to provide domestic water service to purchasers of its lots, the Fontana Farms Company, through the so-called "gentlemen's agreement" only, agreed to provide domestic service to any purchasers in the first section marketed for the payment of $150 without refund privileges. However, in the subsequent marketing of other sections, the Fontana Farms Company made no such representations as to additional costs to be incurred by the purchaser for the extension of domestic water service. As explained by the company's officials, the reason for this difference was that in marketing the original section no part of the water development and installation costs was

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charged up against the land, so that, in order to provide a water system to serve the widely scattered purchasers, it was considered necessary that the Fontana Farms Company receive some reimbursement for the cost incurred therefor but, however, in the case of more recent sections, the difficulties encountered through the charge of $150 for water service were eliminated by absorbing the water development costs in the purchase price of the land.

By reason of the fact that the officials of the Fontana Farms Company and the Fontana Domestic Water Company to all practical purposes are identical and that the offices of the two companies are in the same building, confusion and misunderstanding naturally and inevitably have resulted when prospective consumers have applied for water service. A great majority of the applicants for water service have been told that, before service would be rendered, it would be necessary to pay the sum of $150. Other consumers, served by the same system and residing in the tracts where no charge was required by the Fontana Farms Company for water main extensions, have been supplied without the payment of any amounts to either the Fontana Farms Company or the water company. In other instances, charges have been required ranging from a few dollars to over a hundred dollars. Naturally, this discrimination has created a great amount of dissatisfaction among the water users who in the past have been, and the applicants who even now are, required to pay the sum of $150, or some other amount, for service. The entire difficulty has been caused by the improper and unnecessary intermingling of the real estate operations of the Fontana Farms Company with the business of the public utility water system, resulting in the inability of the public utility patrons to learn of their full rights to water under the utility. In so far as this Commission is concerned, any arrangements entered into by and between purchasers of property and the Fontana Farms Company, placing restrictions or conditions on the right to receive public utility water service from the Fontana Domestic Water Company other than such requirements as provided in the company's rules and regulations, are in no manner whatsoever binding upon the utility, nor would such arrangements preclude any of its patrons from receiving service under its effective rules.

This Commission requires all public utility water systems to make extensions of service to each and every bona fide applicant therefor within their dedicated areas, upon compliance by such applicant with the terms and conditions of reasonable rules and regulations which have been accepted for filing or established heretofore by this Commission. These rules now on file, as well as the rules heretofore in effect, contain no reference whatsoever to the requirement of the payment of $150 without refund privileges, or any other sum, as a condition to the rendering of service but do specifically require the Fontana Domestic

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Water Company to extend its mains 150 feet at its own expense to serve each bona fide applicant, the cost of any extension in excess thereof to be paid by the applicant subject to refund as provided in said rules. All charges, if any, other than the above, made by this water company as a condition precedent to the extensions of water service since the granting to this company of its certificate of public convenience and necessity, to wit, March 14, 1924, are irregular and improper and should be returned.

Attention is called to the fact that the original Extension Rule No. 20 did not give this utility the right to charge a new consumer for any part of the costs of a main extension then installed and for which the cost thereof had already been deposited by some other consumer or consumers. Such right did not become effective until the modified rule was filed on April 15, 1926. It follows, therefore, that any charges made against consumers prior to April 15, 1926, for main extensions already in place and for which deposit had already been made are illegal and should be refunded. This utility has fallen into the error of designating as an extension practically every distribution main relocation and replacement and also has so classified transmission mains installed to supply old territory, in whole or in part. Applicants for service from such mains are not chargeable for any part of the installation costs thereof under the guise of an extension. Obviously, transmission lines laid for the purpose of supplying subdivisions are not properly considered as extensions in so far as individual application for service therefrom is concerned. The absurdity of a contrary conclusion is well illustrated in this instance where the company, in classifying as an extension the so-called Base Line transmission main laid at a cost of several thousand dollars to serve a newly subdivided tract owned by the Fontana Farms Company, could, under such interpretation, charge a single applicant for service from this line one-half of the entire cost thereof.

While the officials of the Fontana Farms Company have alleged that the charge of $150, as collected from certain consumers for the extension of domestic water service, has been made by the Fontana Farms Company itself and was not made by, or in any way connected with the utility, nevertheless, the community of interests between the water company and the Fontana Farms Company has been, and now is, such as to place applicants for water service in a position where they have been, and now are, unable to find out just what their legal rights to public utility water service are, or to take advantage of them. However, the evidence conclusively shows that no efforts whatsoever were made by any of the officials or representatives of either the Fontana Farms Company or the utility to explain to the applicants for water service their rights under the utility's rules and regulations, which

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information such applicants in all fairness were entitled to in a situation so clouded by the unnecessary intermingling of divergent interests. As a matter of fact, the offer of the Fontana Farms Company to pay for the extension of water service to any purchaser of property within certain of its tracts for an expenditure of $150 has enabled a great number of consumers to obtain domestic water service which under existing rules of the public utility would be wholly unremunerative to the utility and economically impossible for the consumers by reason of excessive cost.

In all cases in connection with the extension of water service by the utility to tracts of land to be subdivided and placed upon the market by the Fontana Farms Company or any other concern, the subdivider should be required to pay for the full initial costs of the piping of the subdivision, as provided in section (B) of Rule No. 20. Under this rule, the subdivider is substituted for the individual consumer and upon the piping of the tract no charge thereafter may be assessed against any of the consumers in the subdivision for any part of the costs properly chargeable to the subdivider. From the evidence, it appears that in piping new projects of the Fontana Farms Company this concern has not been required to pay for the installation costs as would be required from any outside operator, firm or individual, but, in certain cases, these subdivisions have been treated in the same manner as a regular main extension wherein the consumers themselves are required to pay the costs or portions thereof. The piping of subdivisions is an entirely different matter from the extension of mains for individual consumers and failure of a utility to recognize this fundamental distinction is bound to result in confusion.

Paragraph (A)—*Second*—of Rule No. 20, "Water Main Extensions," providing for the refunding to the original depositor or depositors from moneys to be obtained through similar deposits to be charged against future consumers connected to the same extension has in this case, as in most others in the past, resulted in great confusion and in a multiplicity of charges and accounts made necessary to handle such a transaction. Although this rule is unquestionably fair to all parties concerned and is primarily intended to eliminate the disadvantage resulting from the practice of requiring one consumer to stand the entire cost of an extension while permitting subsequent consumers to obtain service from the same line without paying any part of the cost thereof, yet, so great are the complications which have resulted in the application of this rule in the present instance, that we believe it should be modified and amended so that subsequent consumers coming on a main extension, the initial cost of which has already been advanced by one consumer, or by two or more consumers where joint application has been made, may not be required to make any deposit for service and the

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original depositor or depositors may receive reimbursement upon the basis of the cost of 150 feet of such original main extension for each new consumer connected thereto. This will eliminate the serious difficulties now experienced from charging new consumers with varying portions of the costs of main extensions heretofore made. In this connection, we wish to recommend to this company that, in view of the past misunderstandings, the company place in effect at once the new extension rule as set out in the following order as to those extensions made under the modified rule of April 15, 1926. The company can well afford to stand the small expense involved in return for the restoration of harmony and better public relationship which will result, together with the benefits accruing from the immediate simplifying of the entire extension difficulties.

In connection with those consumers who, subsequent to March 14, 1924, have been required to pay the sum of $150, or any other amounts, to the Fontana Farms Company, we suggest and recommend to this company that it return all such amounts to the depositors. The Commission is furthermore of the opinion that any deposits of $150, or any amounts other than such as are provided for in the rules and regulations of this utility as then in effect, which have been made by consumers to the Fontana Domestic Water Company subsequent to the granting of its certificate of public convenience and necessity, to wit, March 14, 1924, are illegal and should be refunded by the water company to the consumers either in cash or by way of credit on the monthly bills of such consumers to the extent of 50 per cent of said bills until satisfied, it being understood that the present Rule No. 20, entitled "Water Main Extensions," did not become effective until the fifteenth day of April, 1926. Hereafter, this utility shall extend service to all bona fide applicants strictly in conformance with its rules and regulations on file with this Commission and as modified by the order herein, irrespective of any contracts or agreements containing provisions contrary to said rules and regulations which may, or are alleged to have been entered into between the applicant for such service and any person, firm or corporation other than this utility. It is further recommended that this utility either arrange to move its office to some new location not occupied by any department of the Fontana Farms Company, or to identify the water company's office by conspicuous signs or otherwise in order to make it apparent to all having dealings with the utility that such dealings are not being transacted with the Fontana Farms Company. Immediate steps should be taken also by the utility to print and distribute to all its consumers a complete and accurate copy of its rules and regulations as amended herein, and hereafter a copy of said rules should be presented to each applicant for water service at the time application is made.

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In fairness to the Fontana Domestic Water Company and the Fontana Farms Company, it should be stated that this application was filed with this Commission by the water company for the purpose of enabling the utility to interpret properly its rules and regulations and to remove any cause for complaint which certain of the consumers may now have, or have had in the past, over its requirements for the rendering of service. For obvious reasons, neither the Fontana Farms Company nor the Fontana Domestic Water Company will be specifically directed in this proceeding to make the refunds recommended herein; however, in the event that such refunds should not be so made within a reasonable time, this Commission, in order to protect the rights of the consumers, will take the necessary measures to insure full compliance therewith.

ORDER.

Fontana Domestic Water Company, a corporation, having made application to this Commission for interpretation of its rules and regulations and for an investigation into conditions existing on the system resulting from certain practices heretofore indulged in concerning charges for the extension of water mains to new consumers, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that Rule No. 20, "Water Main Extensions," be and it is hereby canceled and rescinded and, in place thereof, Fontana Domestic Water Company, a corporation, be and it is hereby directed to file with this Commission within thirty days from the date of this order, the following rule and regulation covering water main extensions, effective as of the date of this order.

RULE No. 20—WATER MAIN EXTENSIONS.

1. General Extensions:

The company will extend its water distribution facilities to new consumers at its own expense when the total length of main extension from the existing facilities required is not in excess of 150 feet per consumer. If the total length of main extension required is in excess of 150 feet per consumer, the consumer or consumers applying for such service will be required to advance that portion of the reasonable estimated cost of such extension over and above the estimated cost of the said 150 feet of main per consumer, provided, however, that in no case shall the above estimate be based upon a main in excess of four (4) inches in diameter and the money so advanced will be refunded upon the basis of the cost of 150 feet of main for each additional consumer served from the extension for which deposit has been made within a period of ten years, but in no case shall the refund exceed the original deposit. Adjustment of any substantial differences

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between the estimated and the reasonable actual cost shall be made after completion of the installation. No deposit shall be required from an applicant requesting service from a main extension already in place.

2. Extensions to Serve Tracts or Subdivisions:

Applicants for extensions to supply real estate tracts or subdivisions will be required to deposit with the company the estimated reasonable cost of the necessary facilities, exclusive of service connections and meters, before construction is commenced. The size, type and quality of the materials and location of lines shall be specified by the company and the actual construction will be done by the company or by a contractor acceptable to it. Adjustment of any substantial differences between the estimated and the reasonable actual cost shall be made after completion of the installation. Refunds shall be made for each bona fide consumer within the subdivision upon the basis that the cost of each 150 feet of main within the subdivision bears to the total amount of the original deposit, provided no refunds shall be made after a period of ten years from the date of completion of the installation. In case of disagreement over size, type and/or location of the pipe lines, the matter may be referred to the Railroad Commission for adjustment.

It is hereby further ordered, that Fontana Domestic Water Company, a corporation, file with this Commission, within thirty days from the date of this order, a statement showing the name of each consumer required to make a deposit with either the Fontana Farms Company or the Fontana Domestic Water Company, together with the address of each such consumer, the amount deposited and the date thereof; said statement shall also show for each such consumer the total amount of refunds due under the rules and regulations in effect at the time of making the deposit, the dates and amounts of refunds, if any, made and the basis of such refunds; thereafter and until directed otherwise by this Commission, a monthly statement shall be filed by said Fontana Domestic Water Company, setting forth, in addition to the data required above, the amounts, if any, refunded to consumers as set forth in the opinion which precedes this order.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION No. 19306.

IN THE MATTER OF THE APPLICATION OF SIERRA RAILWAY COMPANY OF CALIFORNIA, A CORPORATION DULY INCORPORATED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF CALIFORNIA, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A MOTOR TRUCK FREIGHT SERVICE AS A COMMON CARRIER OVER THE PUBLIC HIGHWAY, BETWEEN THE CITY OF SONORA, TUOLUMNE COUNTY, AND THE CITY OF STOCKTON, SAN JOAQUIN COUNTY,

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AND BETWEEN OTHER DESIGNATED POINTS AS SPECIFIED IN SAID APPLICATION, ALL OF WHICH ARE SITUATE IN THE COUNTIES OF SAN JOAQUIN, STANISLAUS AND TUOLUMNE, STATE OF CALIFORNIA.

Application No. 13647.

IN THE MATTER OF THE APPLICATION OF R. E. O'BRIEN AND W. E. GRANT AS PARTNERS DOING BUSINESS UNDER THE FIRM NAME OF MOORE TRUCK LINE, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A MOTOR FREIGHT SERVICE FOR THE TRANSPORTATION OF FREIGHT AND AGRICULTURAL PRODUCTS BETWEEN OAKDALE AND TUOLUMNE WITH SERVICE TO KEYSTONE, JAMESTOWN AND SONORA, COLUMBIA, SOULSBYVILLE AND TUOLUMNE, AND ALL INTERMEDIATE POINTS.

Application No. 13708.

Decided February 6, 1928.

CERTIFICATES—AUTO TRUCK.—Sierra Railway Company of California authorized to operate automotive truck service between Stockton and Sonora and between Sonora on the one hand and Columbia, Soulsbyville and Tuolumne on the other.

PLEADING AND PROCEDURE—PARTIES—"PARTNERS."—When an individual is sole owner of automotive operative rights, and together with another designated as a "partner," but who has only a prospective interest in an application to extend such operative right in that he is to be associated with the actual owner in the event that a certificate should be granted, the application of the "partners" can not be considered in any relation to the present operative rights held by the individual.

CERTIFICATES—IN GENERAL—PREFERENCE AMONG APPLICANTS.—A certificate to operate automotive truck service was granted to a railway rather than to a "partnership" when the former, realizing the inadequacy of present rail service, voluntarily and in good faith offered to supplement such service by motor truck, was not forced into making the application because of the filing of a prior application by a threatened competitor, and where, in experience, ability and financial responsibility there was no material difference between the applicants.

Rowan Hardin, for Applicant Sierra Railway Company.
William Grant, for Applicants O'Brien and Grant.
L. G. Markell, for California Transit Company, Protestant.

BY THE COMMISSION.

OPINION.

Sierra Railway Company, a corporation, is engaged in the operation of a railroad line extending from Oakdale to Sonora and Tuolumne, and by its amended application has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile truck line, as a common carrier of freight between Stockton and Sonora, serving intermediate points east of Oakdale, but not serving any intermediates between Oakdale and Stockton, the route between these two points to be via Valley Home and Collegeville. Applicant also requests permission to operate a motor truck freight service between Sonora, on the one hand, and Columbia, Soulsbyville and Tuolumne on the other hand.

Applicant proposes to charge rates and to operate on a time schedule

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in accordance with Exhibits "1" and "3" accompanying said application, and to use as equipment two 2½-ton White trucks.

R. E. O'Brien and W. E. Grant also petition the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an automobile truck service for the transportation of freight between Oakdale and Tuolumne with service to Keystone, Jamestown, Sonora, Columbia, Soulsbyville and Tuolumne.

It is alleged in their amended application that these applicants are operating as copartners under the firm name and style of Moore Truck Line and that they seek this certificate as an extension of present operative rights between Stockton and Oakdale, naming certain specified intermediate points.

The record shows that Grant has no present interest in the operative rights now exercised by O'Brien between Stockton and Oakdale, nor in Moore Truck Line. Originally, a certificate was issued to one H. W. Moore to operate between these two points and as a result of a series of transfers R. E. O'Brien became, and now is, the sole owner of such operative rights. According to the evidence, Grant has only a prospective interest in the instant application in that he is to be associated with O'Brien in the event that a certificate should be granted to these two applicants. Their application, therefore, can not be considered in any relation to the present operative rights held by O'Brien between Stockton and Oakdale.

Applicants propose to charge rates and to operate on a time schedule in accordance with Exhibits "A" and "B" attached to said application, and to use the equipment described in Exhibit "C."

A public hearing on said applications was held before Examiner Gannon at Sonora at which time the matters were consolidated for the purpose of receiving evidence and they are now ready for decision.

Considering first the evidence introduced in support of the application of Sierra Railway Company, we find the chief engineer of said company testifying that the proposed service is intended to be supplementary to the present rail service, and is primarily designed to effect store-door delivery of groceries, fruits, vegetables, ice cream and dairy products. The merchants of Sonora had expressed themselves to the witness as desiring such service in addition to rail service now rendered by applicant company. In his opinion, the proposed service would not be detrimental to the rail service, which consists of daily trains carrying freight and express from Stockton to Jamestown, Sonora and Tuolumne. This service brings shipments to Sonora too late in the day to meet the requirements of merchants who are, in many instances, sending their own trucks to get delivery of goods consigned to them.

Three merchants, two from Jamestown and one from Sonora, testified, in effect, that the proposed service would be a benefit in that it

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would result in an earlier delivery of goods. The bulk of their groceries come either by rail or privately owned trucks from Stockton, and they rely upon itinerant peddlars for fruits and vegetables. Instances were cited of long delays in getting goods from Stockton even on telephonic orders. Truck service would save at least a day and a half in deliveries.

The manager of an orchard company at Sonora testified that he is a shipper of cider, vinegar and similar products, with principal markets in the San Joaquin and Sacramento valleys. He ships no freight by rail, but operates five trucks of his own. The proposed service would be a great convenience, he testified, permitting him to discontinue the use of his own trucks to Stockton. Rail service is satisfactory from San Francisco, but impracticable from Stockton.

Two other witnesses appeared in support of the railway company's application. The superintendent of the company testified as to freight and express movements over the rail line. Freight is delivered to Sierra Railway by the Southern Pacific Company, and leaves Oakdale about 9 a.m., reaching Sonora between 4 and 5 o'clock and Tuolumne at 7 o'clock of the same day. Service eastbound is daily. Westbound service is three times per week, leaving Tuolumne at 9.30 a.m. and reaching Oakdale about 6 p.m. Express shipments, westbound, leave Tuolumne at 7 a.m. and arrive at Oakdale at 9.40 a.m. Eastbound shipments leave Oakdale at 1.05 p.m. and reach Tuolumne at 3.56 p.m. Witness considered freight service adequate for ordinary grocery shipments, but believed merchants desired truck service between Stockton and the terminus of the rail line.

The general manager of the railroad testified that the applicant company was financially able to establish and maintain the proposed service.

We come now to a consideration of the evidence offered in support of the application of O'Brien and Grant. The first witness, a druggist of Tuolumne, testified that he gets the bulk of his goods from Sacramento by rail. Shipments leave Sacramento at 4 p.m., arriving in Stockton the next morning, and eight or nine days are consumed in transporting such shipments from Stockton to Sonora. In his judgment motor freight service would insure a prompter delivery. Asked by counsel for O'Brien and Grant which application he would favor, witness replied: "Whichever one would give us the best service."

Another witness who conducts a grocery business at Tuolumne likewise complained of delay in getting shipments out of Stockton, and testified that he would patronize a motor truck service regardless of which applicant was granted a certificate. Three other witnesses gave similar testimony, their complaints in the main being directed against the present slowness of service out of Stockton. All favor the establish-

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ment of auto truck service as the solution of their difficulties in this regard.

The final witness was applicant O'Brien himself, who stated that he is now conducting a motor truck service between Stockton and Oakdale. He is a practical experienced truck driver and is prepared and able to add to his present equipment should the Commission consider favorably the application in which he is interested. He made some investigation of the proposed field and found little objection to truck service. He proposed to give a one-day service on freight deliveries out of Stockton to Sonora and adjoining towns.

We are satisfied after a full and careful consideration of all the evidence in this proceeding that public convenience and necessity require the establishment of a motor truck freight service in the territory sought to be served. There exists a practical unanimity of opinion favorable to the establishment of the proposed service with little or no choice as between the respective applicants. We are also satisfied that only one truck line is necessary to meet the demands of freight traffic, and we are therefore confronted with the necessity of determining which of said applicants is entitled to a certificate of public convenience and necessity, since both applicants seek authority to operate over similar, if not identical, routes.

The record indicates that both applicants are fully capable of meeting all the obligations demanded by a certificate of public convenience and necessity and that in experience, ability and financial responsibility there is no material difference between them.

For a quarter of a century applicant Sierra Railway Company has endeavored, to the best of its ability, to serve the community extending east from Oakdale and into Tuolumne County. It is presumed to be permanently in the transportation business in this territory in which the other applicant has no established operation. As was said by counsel for an electric railroad in a recent application before this Commission:

> "* * * That position necessarily carries with it a complete willingness, as the community develops, to extend its lines and increase its service and facilities to meet these different situations as they arise." (Decision No. 18717.)

Applicant Sierra Railway Company, realizing the inadequacy of its present rail service, has voluntarily and in good faith offered to supplement such service with a motor truck operation which will adequately meet the demand for a more prompt transportation of freight shipments into the territory here involved. It was not forced into making the application by reason of the filing of a prior application by a threatened competitor. On the contrary, it displayed a commendable regard for the public necessity by offering to supply a service which will undoubtedly meet all requirements.

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From a careful consideration of the evidence in this proceeding we are satisfied that better service can be rendered to the public in this instance by Sierra Railway Company than by O'Brien and Grant. The advantage to merchants of dealing with one transportation company, and their ability to receive deliveries either by rail or truck line, as their needs may require, is quite apparent.

We have concluded, therefore, and hereby find as a fact that applicant Sierra Railway Company is entitled to a certificate of public convenience and necessity to operate a motor truck freight service in accordance with its Application No. 13647 and that the application should be granted, and that Application No. 13708 should be denied.

An order will be entered accordingly.

ORDER.

A public hearing having been held in the above entitled applications, the matters having been duly submitted, the Commission being now fully advised, and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Sierra Railway Company of California of an automobile truck service for the transportation of freight between Stockton and Sonora, serving intermediate points east of Oakdale but not serving any intermediate points between Stockton and Oakdale, the route between these two points to be over the regular highway via Collegeville and Valley Home; also between Sonora, on the one hand, and Columbia, Soulsbyville and Tuolumne on the other hand; and

It is hereby ordered, that a certificate of public convenience and necessity for such service be, and the same is hereby granted to Sierra Railway Company of California, subject to the conditions hereinafter set forth:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from the date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

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4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

It is hereby further ordered, that the application of R. E. O'Brien and W. E. Grant be and the same is hereby denied.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION NO. 19308.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AN ORDER AUTHORIZING CHANGES IN SPECIFIED EXCHANGE AREAS; AUTHORIZING CHANGES IN INTEREXCHANGE AND INTRAEXCHANGE CHARGES TO BE SPECIFIED, AND AUTHORIZING JUST AND REASONABLE EXCHANGE RATES, TOGETHER WITH RULES AND REGULATIONS APPERTAINING THERETO.

Application No. 13795.

Decided February 6, 1928.

CERTIFICATE—TELEPHONE UTILITY—ESTABLISHMENT OF EXCHANGE.—Application of Pacific Telephone and Telegraph Company to establish a separate telephone exchange at Orinda, Contra Costa County, now included in the East Bay Exchange of applicant, denied.

James T. Shaw, Vice President, *Alfred Sutro* and *Max Thelen*, Attorneys, for The Pacific Telephone and Telegraph Company.
Albert I. Loeb, for California Northern Hotel Association.
J. J. Deuel, *L. S. Wing*, and *Edson Abel*, for the California Farm Bureau Federation.
Seth Mann, for San Francisco Chamber of Commerce.
John J. O'Toole, City Attorney, and *Dion Holm*, Assistant City Attorney, for the City and County of San Francisco.
William J. Locke, City Attorney, for City of Alameda.
Earl J. Sinclair, City Attorney, for City of Berkeley.
L. K. Fraser, City Attorney, for City of Albany.
George E. Sheldon, for Uptown Association of Oakland.
Preston Higgins, City Attorney, *C. Stanley Wood* and *George C. Perkins*, Assistant City Attorneys, for City of Oakland.
Earl Warren, District Attorney, for the County of Alameda.
John Francis Neylan, *Grove J. Fink* and *John D. Costello*, for John Francis Neylan and for themselves individually.
J. W. Coleberd, for City of South San Francisco.
Arthur Jocl, for San Francisco Restaurant Association.
E. I. De Larcaga, for Orinda Improvement Association.
Ralph E. Prentice, as an individual subscriber.
William Seward Scott, for Business Men's Association of the Bay District.
J. F. Vizzard, for Draymen's Association of San Francisco and the California Transfer and Storage Association.
S. H. Ilderton, for Ilderton-Lion Travel Company, representing the Travel Companies.
John F. Shea, for California Northern Hotel Association.
Mrs. Harold H. Cardwell, as an individual subscriber.
Charles W. Wolfe, as an individual subscriber.
Mrs. Alice Caton, for Alameda Housewives' League and North Side Protective Club.
Arthur M. Cardon, City Attorney, for City of San Leandro.
Harry See and *G. F. Irvine*, for Brotherhood of Railway Trainmen.

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Charles Clifford, for Sharon Building Exhibit, and as a subscriber.
J. G. Marshall, for Applicant, The Pacific Telephone and Telegraph Company.
A. W. Elkinton, for Telephone Committee of Orinda.
Edward W. Jensen, resident of Orinda, Protestant.
Harry R. Oakley, resident of Orinda, Protestant.
William H. Jordan, Berkeley, Protestant.
E. J. Hadden, resident of Orinda, Protestant.

DECOTO, SEAVEY AND CARR, *Commissioners*.

PRELIMINARY OPINION ON PETITION TO ESTABLISH ORINDA EXCHANGE.

In this proceeding now pending before this Commission, The Pacific Telephone and Telegraph Company requests, among other things, that it be authorized to modify its East Bay exchange area and to establish a new exchange area to be known as the Orinda exchange; and also, to establish certain rates and charges for telephone service in said proposed Orinda exchange in the county of Contra Costa, State of California.

At a hearing of the general proceeding involving the rates and service of the entire San Francisco and East Bay areas, it was urged by applicant that the request for the establishment of a separate exchange at Orinda be considered as a special matter and not be delayed to the completion of the main proceeding. It appears that the extension and addition of plant for the serving of the Orinda area has been held up pending the disposition of this matter. It would be to the advantage of all concerned that a speedy determination of the question be had in order that the public of Orinda would not be further inconvenienced in the matter of delayed telephone installations. A hearing of the application, in so far as it refers to a request for a separate exchange at Orinda, was held at Orinda on December 29, 1927, evidence and testimony received and the matter submitted for decision.

The particular request of the applicant before the commission for decision is that it be authorized to establish an Orinda exchange, taking in a portion of the San Pablo Valley east of the Berkeley Hills, territory generally designated as Orinda, in which, at present, there are some fifty-six telephone subscribers now being served mainly on suburban lines from the East Bay exchange. It is proposed that this district be severed from the East Bay exchange, a separate exchange established with local exchange rates and toll rates charged for telephone communication between Orinda and the East Bay territory. Applicant proposes, if authority is granted, to install a modern automatic central office and to render a high class local exchange service in Orinda. A primary rate area is proposed which would include forty-six of the fifty-six existing subscribers' services. It is contemplated that over a three-year construction period the investment would total $105,000.

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It appears that the local exchange would not pay its full cost for some time in the future.

The territory considered at present is included in the East Bay exchange area and is the only large portion east of the Berkeley Hills not served by a separate exchange. The district has been for a long time and is now being served with ten-party telephone service from the East Bay exchange. At present, there are fifty-two suburban line and three one-party line subscribers and one private branch exchange subscriber served in the district.

The territory generally from a physical standpoint is isolated from the East Bay exchange area by a district comprising the Berkeley Hills, which probably will not be built upon for a long period in the future. During the past few years, a considerable development in summer and permanent residences has been carried on in the center of this district generally adjacent to the Orinda Country Club and Orinda Park. Probably one hundred permanent or summer residences and a few stores now are established. The telephone requirements have increased fairly rapidly in the past few years. There have been continued demands for added service and requests have been made by certain applicants for better than ten-party suburban service. The district in which the majority of the present telephone subscribers are located has been subdivided and there are at least one thousand lots, most of which have been sold, but on which only a small development now exists.

The evidence indicates a very definite community of interest between this district and the East Bay metropolitan area. Most of the subscribers are closely connected in a business or social way with the East Bay and a number of the residences are for summer occupancy, being owned by East Bay people. At the present time, the main use of the telephone service is for calling between Orinda and the metropolitan area west of the Berkeley Hills, approximately 90 per cent of the calls being across the hills and only 10 per cent locally.

The testimony indicates that practically all the present subscribers desire that the service be continued as a part of the East Bay exchange. The majority of subscribers state they are content with ten-party service, although a few desire a better grade of service. It does not appear that the range of use between local and East Bay service among the subscribers is great enough to justify the establishment of a local zone or exchange at the present time.

The evidence indicates that it will be necessary for the applicant to install a toll cable connecting this district with the East Bay exchange, whether it establishes a local exchange or central office, or continues to render service from the East Bay exchange. It would appear that the present and near future demands can be supplied by the installa-

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tion of cable facilities contemplated for the exchange installation and that the needs of the community can be met for considerable time in the future without the necessity of establishing a central office at Orinda. It is probable that in time, when its population has materially increased, the local Orinda district will develop a local community interest which will make advisable the establishment of a separate exchange with toll or message charges to the East Bay district, but we are convinced from the facts presented and the attitude of the existing and prospective subscribers that, at the present time, and for some time in the future, the establishment of a local exchange is not justified.

It is our recommendation that the application be denied and that the applicant take steps immediately to install the necessary facilities to render adequate service in this district as a part of the East Bay exchange area.

PRELIMINARY ORDER ON PETITION TO ESTABLISH ORINDA EXCHANGE.

The Pacific Telephone and Telegraph Company having filed application with this Commission proposing the establishment of local exchange service within the district generally designated as Orinda and the changing of certain boundaries of the East Bay exchange area and the establishment of certain local exchange rates and interexchange rates from and to the proposed Orinda exchange, and the matter having been heard and the Railroad Commission having fully considered the evidence, this Commission hereby finds that the establishment of a separate telephone exchange at Orinda will not at this time be in the interest of the subscribers or the public of Orinda or of the East Bay exchange area.

It is hereby ordered, therefor that the application of The Pacific Telephone and Telegraph Company for the establishment of the Orinda exchange and certain other authority necessary to such establishment be denied without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION No. 19312.

IN THE MATTER OF THE APPLICATION OF KATHRYN B. H. McGEOGHEGAN FOR PERMISSION TO OPERATE A WATER SYSTEM ON LANDS ADJACENT TO RAILROAD STATION KNOWN AS "OPAL" IN COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA.

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Application No. 14216.
Decided February 6, 1928.

CERTIFICATE—WATER UTILITY.—Kathryn McGeoghegan authorized to operate a water system in "Opal Subdivision No. 1" and adjoining lands adjacent to Capitola, Santa Cruz County.

CERTIFICATES—CONDITIONS PRECEDENT TO ISSUANCE—POSSESSION OF FRANCHISE.—When streets or roads in which pipe lines are installed have not yet been dedicated to public use, no franchise or other permit from the county authorities is necessary for the purpose of an application for a certificate to operate a water system.

J. T. McGeoghegan, for Applicant.

BY THE COMMISSION.

OPINION.

In this proceeding, Kathryn B. H. McGeoghegan asks this Commission for a certificate of public convenience and necessity for the operation of a water system to supply water for domestic and other purposes to consumers in "Opal Subdivision No. 1" and certain other adjoining unsubdivided lands, all located adjacent to Capitola, Santa Cruz County.

A public hearing in this matter was held before Examiner Rowell at Santa Cruz after all interested parties had been notified and given an opportunity to appear and be heard.

The evidence shows that the present water system was installed about the year 1925 for the purpose of furnishing water to consumers in a subdivision known as "Opal Subdivision No. 1," located adjacent to Capitola. The water is obtained by pumping from a 10-inch well, 198 feet deep, from which it is elevated into a 5000-gallon redwood tank on a 50-foot tower. The water is then distributed by gravity through approximately 7336 feet of mains varying from six to two inches in diameter. There are, at present, about ten service connections, all of which are unmetered. There are four other wells in the area owned by applicant which are available for utility purposes and which can be utilized to augment the present source of supply when the service demands of new consumers require an additional supply of water.

The streets or roads in which the pipe lines are installed have not yet been dedicated to the public and no franchise, or other permit, from the county authorities is necessary for the purposes of this proceeding.

At the hearing, the application was amended to include a request for authority to charge a flat rate of $1.50 per month and a minimum meter charge of $1.50 per month. The evidence indicates that applicant is financially able to operate the water system and no one protested against the request of applicant. No other public utility water system is furnishing water to this area and, as the rates requested are prac-

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tically identical to those charged by similar water systems operating in the general vicinity, it appears that the application for a certificate and the authority to charge the schedule of rates substantially as requested should be granted.

ORDER.

Application as entitled above having been made to this Commission, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

The Railroad Commission of the State of California hereby declares that public convenience and necessity require and will require that Kathryn B. H. McGeoghegan operate a water system for the purpose of supplying water for domestic and other purposes to consumers residing in "Opal Subdivision No. 1" and other lands adjacent thereto, all lying within the following boundaries:

That portion of Rancho Arroyo Del Rodeo adjacent to Capitola about four miles east of the city of Santa Cruz and bounded on the north by Fairview avenue (or Lower Soquel road), on the west by Forty-first avenue, on the south by Bay of Monterey and on the east by Bay of Monterey and Forty-ninth avenue, in the county of Santa Cruz.

It is hereby ordered, that Kathryn B. H. McGeoghegan be and she is hereby authorized to file with this Commission, within thirty days from date of this order, the following schedule of rates to be charged for all service rendered on and after the first day of March, 1928:

RATE SCHEDULE.

Flat Rates.

For each service connection	$1 50 per month

Meter Rates.

Minimum monthly charges:

¾ x ¾-inch meter	$1 50 per month
¾-inch meter	2 00 per month
1 -inch meter	3 00 per month
1½-inch meter	4 50 per month
2 -inch meter	6 00 per month

Each of the foregoing "minimum monthly charges" will entitle the consumer to the quantity of water which that minimum monthly charge will purchase at the following "monthly quantity rates:"

Monthly quantity rates:

0 to 600 cubic feet, per 100 cubic feet	$0 25
Next 1,400 cubic feet, per 100 cubic feet	20
Over 2,000 cubic feet, per 100 cubic feet	15

It is hereby further ordered, that Kathryn B. H. McGeoghegan be and she is hereby directed to file with the Railroad Commission, within thirty days from the date of this order, rules and regulations governing service to her consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

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For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION No. 19314.

IN THE MATTER OF THE APPLICATION OF SANTA MARIA GAS COMPANY, A CORPORATION, FOR AUTHORITY TO ISSUE AND SELL ITS FIRST AND REFUNDING MORTGAGE SIX PER CENT GOLD BONDS.

Application No. 14294.

Decided February 6, 1928.

SECURITY ISSUES—BONDS.—Santa Maria Gas Company authorized to issue and sell on or before October 1, 1928, for not less than 98 per cent of face value plus accrued interest $110,000 of first mortgage 6 per cent bonds due April 1, 1940, to reimburse treasury.

Chickering and Gregory, by *Evan Williams*, for Applicant.

BY THE COMMISSION.

OPINION.

In this proceeding Santa Maria Gas Company asks permission to issue and sell at not less than 97 per cent of their face value and accrued interest, $110,000 of its first mortgage 6 per cent bonds due April 1, 1940, for the purpose of reimbursing its treasury on account of expenditures for additions and betterments and to pay the cost of new construction to which reference will hereafter be made.

Santa Maria Gas Company is engaged in the business of furnishing natural gas in the cities of Santa Maria, San Luis Obispo, and to other places in the counties of San Luis Obispo and Santa Barbara. As of November 30, 1927, the company reports $300,700 of stock and $313,000 of bonds outstanding. Its current liabilities are reported at $135,166.05 and consist of $27,788.32 of accounts payable, $6,000 of mortgage notes payable, $67,000 of unsecured notes payable, $4,592.95 of consumers' deposits and $29,784,78 of accrued taxes, interest, etc. The current assets of the company are reported at $73,702.42, consisting of $28,041.33 of materials and supplies, $38,778.12 of accounts receivable, less reserve for bad debts, $815.30 of notes receivable and $6,067.67 of cash and sinking funds.

In Exhibit "B" the company reports that its unreimbursed capital expenditures as of November 30, 1927, amounted to $92,952.63. The $92,952.63 represents the difference between the company's fixed capital installed on January 1, 1920, plus cost of additions and betterments installed from that date to November 30, 1927, and the amount realized from the outstanding bonds and stock and the depreciation reserve on November 30, 1927.

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In Exhibit "C" the company reports the cost of improvements at $116,010, which improvements consist of the following:

1. Two high pressure storage gas holders at San Luis Obispo, contracted with Western Pipe and Steel Company at $35,415 each	$70,830 00
Cost of foundations, connections and piping	3,000 00
Subtotal	$73,830 00
2. Oilport–San Luis Obispo six-inch welded line, 36,000 feet at 80 cents per foot	28,800 00
3. Intake gas line to Shell Company lease, Santa Maria oil fields, 8-inch welded line, 8500 feet at $1 per foot	8,500 00
4. South street line, San Luis Obispo, high pressure delivery to new holders, 6100 feet at 80 cents per foot	4,880 00
Total	$116,010 00

R. E. Easton, secretary and treasurer of Santa Maria Gas Company, testified that the high pressure storage gas holders have been practically completed; that the eight-inch gas line in the Santa Maria oil fields and the high pressure delivery line to the new gas holders have been completed and are in operation. He further testified that the company's increase in business makes it necessary to provide the additional storage facilities at San Luis Obispo and the installation of larger gas mains mentioned. To pay in part for the gas holders the company has borrowed $60,000 from the Crocker First National Bank.

If the company is given permission to sell its bonds it will use some of the proceeds obtained from the sale of such bonds to pay the $60,000 note.

ORDER.

Santa Maria Gas Company having applied to the Commission for permission to issue $110,000 of its bonds, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expense or to income, and that this application should be granted as herein provided; therefore,

It is hereby ordered, that the Santa Maria Gas Company be and it is hereby authorized to issue and sell on or before October 1, 1928, for not less than 98 per cent of their face value and accrued interest, $110,000 of its first mortgage 6 per cent bonds due April 1, 1940, and shall use the proceeds to pay in part the cost of additions and betterments described in Exhibit "C" filed in this proceeding, or pay indebtedness incurred for the purpose of paying for such additions and betterments, or reimburse its treasury because of income expended for additions and betterments, the cost of which is chargeable to fixed capital accounts.

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It is hereby further ordered, that the authority herein granted will become effective when Santa Maria Gas Company has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $110; and that Santa Maria Gas Company shall keep such record of the issue and sale of the bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION NO. 19315.

IN THE MATTER OF THE APPLICATION OF OUTER HARBOR DOCK AND WHARF COMPANY, A CALIFORNIA CORPORATION, AND OUTER HARBOR TERMINAL RAILWAY COMPANY, A CALIFORNIA CORPORATION, FOR AN ORDER AUTHORIZING THE SALE AND LEASE OF PUBLIC UTILITY PROPERTY BY OUTER HARBOR DOCK AND WHARF COMPANY TO OUTER HARBOR TERMINAL RAILWAY COMPANY.

Application No. 14350.

Decided February 6, 1928.

SECURITY ISSUES—STOCK—TRANSFER.—Outer Harbor Dock and Wharf Company authorized to sell to Outer Harbor Terminal Railway Company certain railway properties at Los Angeles Harbor and the latter authorized to issue $130,000 of capital stock in payment therefor.

Paul M. Gregg and *Jerry H. Powell*, for Applicants.

BY THE COMMISSION.

OPINION.

This is an application for an order authorizing Outer Harbor Dock and Wharf Company to sell certain railroad properties and to lease certain rights of way used in connection with such properties, to Outer Harbor Terminal Railway Company, and authorizing Outer Harbor Terminal Railway Company to issue, in consideration, $130,000 of its capital stock.

Outer Harbor Dock and Wharf Company is engaged in the business of supplying warehouse, wharf, terminal and other services and facilities at Los Angeles Harbor, owning and operating, among other things, certain railroad properties used for switching purposes. Operations are conducted on properties held under two leases; one from the city of San Pedro terminating in 1956; and the other from the city of Los Angeles terminating in 1952.

It is reported that because of the railroad operations, Outer Harbor Dock and Wharf Company is subject to the Interstate Commerce Commission, and that as these operations constitute only about 5 per cent

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of its total business, it is deemed advisable to separate the railroad and switching operations from the remainder of the business and to have such operations performed by a corporation expressly organized for that purpose, thereby removing the present owner from the jurisdiction of the Interstate Commerce Commission. To this end it appears that Outer Harbor Dock and Wharf Company has caused the incorporation, on or about July 9, 1927, of Outer Harbor Terminal Railway Company, and to it proposes to transfer the railroad properties and business in exchange for $130,000 of stock. The present application shows that the Interstate Commerce Commission by its order dated December 23, 1927, permitted the new corporation to acquire and operate the line of railway and to issue the $130,000 of stock.

The properties involved in the transaction consist of 6.33 miles of switching tracks, including rails, ties, track material and ballast, with all switching equipment, and operating equipment consisting of two locomotives, four flat freight cars and one oil car. The right of way on which the tracks are located is to be leased to Outer Harbor Terminal Railway Company for terms coextensive with the leaseholds, terminating 1952 and 1956, under which Outer Harbor Dock and Wharf Company now conducts its operations. As annual rental, the railway company will pay two cents a square foot upon 526,000 square feet, or $10,520, payable for the period commencing January 1, 1928, and ending April 3, 1932. In addition, the dock and wharf company has assigned to the railway company the right to operate over 100 feet of track owned by the city of Los Angeles, and it appears that the city has consented to the assignment. A copy of the agreement between the two applicant corporations for the sale and lease of properties and rights of way is filed with the application as Exhibit "C."

The application indicates that as of December 31, 1926, the original cost of the properties to be transferred was estimated at $139,533.05, the cost of reproduction new at $180,698.67 and the cost of reproduction new less depreciation at $128,083.33. The order herein will authorize the issue of the $130,000 of stock in payment for the properties, but such authority is not to be construed as a finding of value of the properties.

ORDER.

Application having been made to the Railroad Commission for an order authorizing the lease and transfer of property and the issue of stock, and the Railroad Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through such issue is reasonably required for the purpose specified herein and that the

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expenditure for such purpose is not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Outer Harbor Dock and Wharf Company be and it hereby is authorized to sell to Outer Harbor Terminal Railway Company the railway properties referred to in this application, and to lease to Outer Harbor Terminal Railway Company the rights of way described in Exhibit "B," attached to the petition, herein, such sale and lease to be in accordance with the terms and conditions of the agreement (Exhibit "C") dated August 29, 1927, by and between the two companies.

It is hereby further ordered, that Outer Harbor Terminal Railway Company be and it hereby is authorized to issue $130,000 of its capital stock in payment for the properties herein authorized to be transferred.

The authority herein granted is subject to the following conditions:

1. The amount of stock herein authorized to be transferred shall not be urged before this Commission or other public body having jurisdiction as a measure of value of the properties herein authorized to be transferred for the purpose of fixing rates, or for any purpose other than this transfer.

2. Outer Harbor Terminal Railway Company shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty days after such issue, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted shall become effective ten days after the date hereof.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION No. 19318.

IN THE MATTER OF THE APPLICATION OF PASADENA-OCEAN PARK STAGE LINE, INCORPORATED, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING IT TO EXTEND ITS PRESENT STAGE SERVICE FROM UNIVERSAL CITY TO BURBANK, CALIFORNIA, AND TO OPERATE SUCH EXTENSION AS A PORTION OF ITS EXISTING CULVER CITY-UNIVERSAL CITY STAGE SERVICE.

Application No. 14232.

IN THE MATTER OF AN INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE PRACTICES AND OPERATIONS OF J. B. AULD, AND C. AULD, COPARTNERS, OPERATING A PUBLIC UTILITY AUTO STAGE SERVICE BETWEEN LOS ANGELES AND BURBANK.

Case No. 2435.

IN THE MATTER OF AN INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE PRACTICES AND OPERATIONS OF JOHN B. AULD, OPERATING A PUBLIC UTILITY AUTO STAGE SERVICE BETWEEN BURBANK AND HOLLYWOOD.

Case No. 2436.

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IN THE MATTER OF THE APPLICATION OF ORIGINAL STAGE LINE, INCORPORATED, FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AN AUTOMOBILE PASSENGER SERVICE, ALSO EXPRESS MATTER, BETWEEN HOLLYWOOD AND BURBANK, VIA ALTERNATE ROUTES.

Application No. 14188.

IN THE MATTER OF THE APPLICATION OF ROBERT BROMBERG, RECEIVER IN BANKRUPTCY OF THE ESTATE OF JOHN B. AULD, BANKRUPT, TO SELL, AND ORIGINAL STAGE LINE, INCORPORATED, TO PURCHASE, AN AUTOMOBILE PASSENGER LINE OPERATED BETWEEN BURBANK AND HOLLYWOOD VIA FIRST NATIONAL STUDIOS, CALIFORNIA.

Application No. 14207.

Decided February 6, 1928.

AUTOMOTIVE TRANSPORTATION—CERTIFICATES—TRANSFER.—Various orders made with respect to auto stage service between Los Angeles, Universal City and Burbank.

AUTOMOTIVE TRANSPORTATION—OPERATIVE RIGHTS—REVOCATION.—Abandonment of service or discontinuance of operation without the obtaining of authorization justify the revocation of operative rights.

AUTOMOTIVE TRANSPORTATION—OPERATIVE RIGHTS—REVOCATION.—While there was a slight disruption of service as a result of a bankruptcy proceeding involving the estate of the holder of an operative right, but there was no real abandonment of service, such right was not revoked.

CERTIFICATES—GROUNDS FOR REFUSING—FIELD ADEQUATELY SERVED.—Certificates to operate auto service in territory served by an existing auto carrier, sought by applicants largely because of threatened discontinuance of service, on account of bankruptcy proceedings, will be denied upon authorizing the transfer of the existing operative right to a responsible carrier.

H. W. Kidd, for Pasadena-Ocean Park Stage Line, Incorporated, Applicant in Application No. 14232, Protestant in Applications Nos. 14188 and 14207, and Interested Party in Cases Nos. 2435 and 2436.

Richard T. Eddy, for Original Stage Line, Inc., Applicant in Application No. 14207, Intervener in Cases Nos. 2435 and 2436, and Protestant in Application No. 14232.

Russell Seymour, for Robert Bromberg, Receiver in Bankruptcy of the Estate of John B. Auld, and an Applicant in Application No. 14207.

Jess E. Stephens, City Attorney of Los Angeles, by *Milton Bryan*, Deputy City Attorney, for the City of Los Angeles.

James Gunn and *J. O. Marsh*, for the Board of Public Utilities and Transportation of the City of Los Angeles.

Forrest A. Betts and *H. O. Marler*, for the Pacific Electric Railway.

James H. Mitchell, City Attorney of City of Burbank, for the City of Burbank.

J. D. Radcliffe and *A. B. Gridley*, for the Council of City of Burbank.

Chas. B. Wood and *Leigh Rothenberg*, for the Chamber of Commerce of the City of Burbank.

Roy Campbell, for Magnolia Park District of the City of Burbank.

J. L. Eigholz, for Magnolia Park Improvement Association (Burbank).

Carl Bush, for Hollywood Chamber of Commerce.

LOUTTIT, *Commissioner*.

OPINION.

Five separate matters are involved in the above entitled proceedings, namely:

Application No. 14232, Pasadena-Ocean Park Stage Line, Inc., seeks certificate of public convenience and necessity to extend its pres-

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ent automotive stage service from Universal City to Burbank and to operate said extension as a part of its Culver City-Universal City Stage Line.

Case No. 2435, Investigation on the Commission's own motion into the practices and operations of J. B. Auld and C. Auld, copartners, operating a public utility auto stage service between Los Angeles and Burbank.

Case No. 2436, Investigation on the Commission's own motion into the practices and operations of John B. Auld, operating a public utility auto stage service between Burbank and Hollywood.

Application No. 14188, Original Stage Line, Inc., for certificate of public convenience and necessity to operate an automobile stage service, also for the transportation of express matter between Hollywood and Burbank, via alternate routes.

Application No. 14207, Robert Bromberg, receiver in bankruptcy of the estate of John B. Auld, bankrupt, to sell, and Original Stage Line, Incorporated, to purchase, an automobile stage line operated between Burbank and Hollywood, via First National Studios.

Public hearings were held in Los Angeles, the five matters were consolidated for hearing, evidence was taken, an order of submission made and the consolidated matters are now ready for decision.

The evidence clearly indicates that there was an abandonment of service by J. B. Auld and C. Auld, a copartnership, between Los Angeles (Hollywood) and Burbank, or what is described as the Magnolia avenue line. No authority to abandon service or to discontinue operation was obtained from the Commission. The service in question was operated under authority of a certificate of public convenience and necessity granted to the Aulds, as copartners, by the Railroad Commission in its Decision No. 17191, dated August 5, 1926, and issued on Application No. 13060. This certificate authorized operation of an automotive passenger service over and along the following route:

> Beginning at Southern Pacific crossing and Lankershim boulevard (Hewitt Station), thence southerly on Lankershim boulevard to Magnolia avenue, thence easterly on Magnolia avenue to San Fernando road (Burbank); thence southeasterly on San Fernando road to Orange Grove avenue, thence northeasterly on Orange Grove avenue to Fourth street, thence northwesterly on Fourth street to Cypress avenue, thence northeasterly on Cypress avenue to Tenth street, thence southeasterly on Eleventh street to Alameda avenue (Burbank city limits) and return via same route.

The above described right is the subject of the Commission's order issued on its own motion, instituting an investigation into the operations of the Auld brothers under said right, which order is entitled Case No. 2435. Clearly this right should be revoked because of abandonment of service and the order herein will so provide.

As to the Commission's order, issued on its own motion (Case No. 2436), instituting an investigation into the operations of John B. Auld

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between Hollywood and Burbank (Dark Canyon line), the evidence shows that while there was a slight disruption of service as a result of bankruptcy proceedings involving the estate of John B. Auld, there was no real abandonment of service. Case No. 2436 should, therefore, be dismissed and the order herein will so provide.

Consideration will now be given to Application No. 14207, which is an application by Robert Bromberg, receiver in bankruptcy of the estate of John B. Auld, bankrupt, to sell, and Original Stage Line, Inc., to purchase the operating right heretofore issued by the Railroad Commission to John B. Auld, and under which Auld, up to the time of the bankruptcy proceedings, operated an automotive passenger service between Hollywood and Burbank. This right was established by the Commission in its Decision No. 13005, dated January 9, 1924, and issued on Application No. 9622. The right granted to Community Investment Company, Inc., in that decision authorizes the operation of an automotive passenger service over and along the following route:

> Beginning at the junction of Hollywood boulevard and Highland avenue; thence north in Highland avenue to Ventura boulevard, and northerly to its junction with the Dark Canyon road, and thence northerly and westerly over said road to Olive street, continue in Olive street to its junction in Tenth street and returning by the same identical route.

By Decision No. 16993 of the Commission, dated June 25, 1926, this right was transferred to John B. Auld. As has been stated, Auld gave service in accordance with this right up to the time of the bankruptcy proceedings when service, after a break too slight to be considered as an abandonment, was undertaken by the duly appointed receiver, Mr. Bromberg, one of the applicants herein, a copy of whose appointment as receiver in the matter of John B. Auld by the bankruptcy court has been filed with the Commission. Mr. Bromberg operated the line until it was sold, subject to the approval of the Railroad Commission, to Original Stage Line, Inc., the sale being approved by an order of the referee in bankruptcy of the United States District Court. A copy of the court's order of approval is attached to and made part of Application No. 14207, which application was filed jointly by Receiver Bromberg and Original Stage Line, Inc., immediately after the court sale.

Application No. 14207 for an order of the Commission approving the sale and transfer by Receiver Robert Bromberg to Original Stage Line, Inc., of the operating right heretofore granted to John B. Auld by the Railroad Commission in its Decision No. 16993 should be granted and the order herein will be made accordingly.

There now remains to be disposed of applications Nos. 14232 and 14188. Each of these applications, No. 14232 by Pasadena-Ocean Park Stage Line, Inc., and No. 14188 by Original Stage Line, Inc.,

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asks for a certificate of public convenience and necessity to operate an automobile service in territory served by John B. Auld and Auld Bros. They were filed largely because of the threatened discontinuance of the service given by John B. Auld and the actual discontinuance of the service given by Auld Bros. The order herein will transfer to Original Stage Line, Inc., the operating right heretofore issued by this Commission to John B. Auld, making unnecessary further consideration of that part of the Original line's application for a new certificate authorizing a service identical with that given by Auld between Burbank and Hollywood under the right created by Decision No. 13005 and transferred to Auld by Decision No. 16993.

As to the alternate routing proposed by Original Stage Line, which is mainly through territory formerly served by Auld Bros., which service was abandoned by them, as the record in this proceeding shows, it appears from testimony offered by residents of the territory proposed to be served and citizens of Burbank that public convenience and necessity require the reestablishment of this service through the issuance of a new certificate. Certificate will, therefore, be granted for passenger service only, the evidence not justifying granting authority to transport express.

In Application No. 14232 Pasadena-Ocean Park Stage Line, Inc., asks for authority to operate, as an extension of its present service between Culver City and Universal City, a service from Universal City to Burbank. Granting of authority for such a service over the route proposed is not justified by the evidence, particularly in view of the fact that for a large part of the distance the service proposed by the Pasadena-Ocean Park Company will be over the route traversed by Original Stage Line under the Auld right herein transferred. There is not enough business for two lines in that territory. Application No. 14232, then, will be denied.

After giving full consideration to all the evidence in the various matters involved in this consolidated proceeding, I am of the opinion and hereby find as a fact:

1. That John B. and C. Auld abandoned the automotive service authorized to be performed by them by Decision No. 17191 and that the operating right granted by said decision should be revoked and annulled.

2. That there was no abandonment of service by John B. Auld between Hollywood and Burbank, as authorized by Decision No. 16993 and that, therefore, Case No. 2436 should be dismissed.

3. That the application of Robert Bromberg, receiver in bankruptcy of the estate of John B. Auld, to sell, and Original Stage Line, Inc., to purchase operating right heretofore granted to John B. Auld should

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be granted and the operation of the line by Receiver Bromberg pending bankruptcy proceedings approved.

4. That the application of Original Stage Line, Inc., as amended, for a certificate to operate automotive passenger and express service between Hollywood and Burbank as to the alternate route should be granted, the service to be limited to the transportation of passengers only.

5. That the application of Pasadena-Ocean Park Stage Line, Inc., for authority to extend its service between Culver City and Universal City to Burbank should be denied.

In connection with the transfer by Receiver Bromberg of the Auld operating right to Original Stage Line, Inc., and the issuance to Original Stage Line of a certificate authorizing the alternate service as herein described, Original Stage Line, Inc., is hereby placed upon notice that "Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

I recommend the following form of order:

ORDER.

Public hearings having been held on the above entitled applications, the matters having been duly submitted, the Commission being now fully advised and basing its order on the findings appearing in the opinion preceding this order;

It is hereby ordered, that the operating right heretofore granted to J. B. and C Auld, copartners, in Decision No. 17191 be and the same hereby is revoked and annulled; and

It is hereby further ordered, that J. B. Auld, for the partnership, shall immediately cancel tariff of rates and time schedules on file with the Railroad Commission covering service heretofore authorized by Decision No. 17191; and

It is hereby further ordered, that the operation by Robert Bromberg, receiver for the estate of John B. Auld, bankrupt, of the automotive passenger stage service formerly conducted by said John B. Auld be and the same is hereby approved.

It is hereby further ordered, that Case No. 2436 be and the same is hereby dismissed; and

It is hereby further ordered, that Application No. 14232 be and the same is hereby denied; and

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It is hereby further ordered, that Application No. 14207 be and the same is hereby granted, subject to the following conditions:

1. That the operating right herein authorized to be transferred shall be the operating right heretofore granted by Railroad Commission Decision No. 13005 which right, transferred to John B. Auld by Decision No. 16993, authorizes operation of an automotive passenger stage service over and along the following route:

> Beginning at the junction of Hollywood boulevard and Highland avenue: thence north in Highland avenue to Ventura boulevard, and northerly to its junction with the Dark Canyon road, and thence northerly and westerly over said road to Olive street, continue in Olive street to its junction in Tenth street and returning by the same identical route.

2. That the order herein shall not be construed as authorizing Original Stage Line, Inc., to operate any different service than that authorized in said Decision No. 16993 and shall not be construed as in any way authorizing Original Stage Line, Inc., to hook up, join, merge or consolidate said operating right with rights now owned by it.

3. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer authorized.

4. Applicant Robert Bromberg, as receiver of the estate of John B. Auld, shall immediately unite with applicant Original Stage Line, Inc., in common supplement to the tariffs on file with the Commission, applicant Auld on the one hand withdrawing, and applicant Original Stage Line, Inc., on the other hand accepting and establishing such tariffs and all effective supplements thereto.

5. Applicant Robert Bromberg, as receiver of the estate of John B. Auld, shall immediately withdraw time schedules filed in Auld's name with the Railroad Commission, and applicant Original Stage Line, Inc., shall immediately file, in duplicate, in its own name, time schedules covering service heretofore authorized to be given by John B. Auld, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of Auld, or time schedules satisfactory to the Railroad Commission.

6. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

7. No vehicle may be operated by applicant Original Stage Line, Inc., unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Original

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Stage Line, Inc., of an automotive service for the transportation of passengers only between Hollywood and Burbank via Hollywood way and Magnolia avenue over and along the following route:

Between Tenth and Olive in the city of Burbank, along Olive street to San Fernando road, thence easterly on San Fernando road to bus depot about one-half block away, thence on San Fernando road westerly to Magnolia avenue, thence westerly on Magnolia avenue to Hollywood way, thence southerly on Hollywood way to Olive avenue, thence on Olive avenue to Pass avenue, thence to Hollywood way, sometimes called Dark Canyon road, thence into Tujunga drive to Highland avenue, returning by the same route,

said operation to be conducted in conjunction with and as part of the service Original Stage Line, Inc., is herein authorized to perform under authority of certificate of public convenience and necessity acquired from the estate of John B. Auld, bankrupt, and not as a separate service; and

It is hereby further ordered, that a certificate of public convenience and necessity for such a service be and the same is hereby granted to Original Stage Line, Inc., subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof, said acceptance to contain the declaration that the certificate granted herein is accepted not as a separate operating right but as part of the operating right acquired by applicant by purchase from the estate of John B. Auld and that the service to be performed thereunder will be operated as an alternate routing of said service, a through service to be given in each instance.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, subject to the limitations imposed herein and in accordance with the amended application of applicant, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed twenty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

5. Original Stage Line, Inc., shall file a sketch clearly showing route to be followed under the certificate herein authorized, which

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routing shall be in accordance with route proposed herein and shall also clearly set forth operation performed under authority of the John B. Auld right transferred by the Commission's order herein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State California.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION No. 19319.

IN THE MATTER OF THE INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE REASONABLENESS OF PROPOSED RULES AND REGULATIONS GOVERNING THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE AND OPERATION OF INTERLOCKING PLANTS, MANUALLY OR AUTOMATICALLY CONTROLLED OR OF REMOTE CONTROL, AT CROSSINGS, JUNCTIONS, DRAWBRIDGES, IN YARDS AND AT SIDINGS OF RAILROADS AND STREET RAILROADS.

Case No. 2451.

Decided February 6, 1928.

GENERAL ORDER—INTERLOCKING PLANTS.—General Order No. 33-A adopted, superseding General Order No. 33, providing for rules governing interlocking plants on railroads and street railroads.

E. J. Foulds, *W. E. Boland*, and *S. R. Florence*, for Southern Pacific Company, Pacific Electric Railway Company, Stockton Electric Railroad Company, Fresno Traction Company, Peninsular Railway Company and San Jose Railroads.

Fred E. Pettit, Jr., for Los Angeles and Salt Lake Railroad Company.

E. Winans, for The Atchison, Topeka and Santa Fe Railway Company.

H. G. Weeks, for Los Angeles Railway Corporation.

CARR, *Commissioner*.

OPINION.

This is an investigation instituted on the Commission's own motion into the propriety of a general order governing the construction, reconstruction, maintenance and operation of interlocking plants, manually or automatically controlled or of remote control, at crossings, junctions, drawbridges, in yards and at sidings of railroads and street railroads, which it is proposed will supersede General Order No. 33, approved June 20, 1913, and bring the latter into conformity with modern practices.

A public hearing was held at San Francisco, California, on December 30, 1927.

There seems to be no disagreement over the advisability of a new general order being made to supersede General Order No. 33, nor does there seem to be any disagreement as to the provisions it should contain. I recommend the following form of order.

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ORDER.

An investigation having been instiuted on the Commission's own motion into the reasonableness of certain proposed rules and regulations governing the construction, reconstruction, maintenance and operation of interlocking plants, manually or automatically controlled or of remote control, at crossings, junctions, drawbridges, in yards and at sidings of railroads and street railroads, and the matter being under submission and ready for decision:

The Railroad Commission of the State of California hereby finds as a fact that the rules and regulations governing the construction, reconstruction, maintenance and operation of interlocking plants, manually or automatically controlled or of remote control, at crossings, junctions, drawbridges, in yards and at sidings of railroads and street railroads, attached hereto and to be known hereafter as this Commission's General Order No. 33-A, are reasonable, just and in the interests of public health and safety, and basing our order on the above finding of fact;

It is hereby ordered, that this Commission's General Order No. 33, approved June 20, 1913, and effective August 1, 1913, be and it is hereby superseded by General Order No. 33-A.

It is hereby further ordered, that all construction, reconstruction, maintenance and operation of interlocking plants, manually or automatically controlled or of remote control, at crossings, junctions, drawbridges, in yards and at sidings of railroads and street railroads, coming within the jurisdiction of this Commission on and after March 1, 1928, shall conform to the rules and regulations attached hereto and to be known as this Commission's General Order No. 33-A.

The effective date of this order shall be March 1, 1928.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this sixth day of February, 1928.

GENERAL ORDER
No. 33-A.

(SUPERSEDING GENERAL ORDER No. 33.)

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATIONS GOVERNING THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE AND OPERATION OF INTERLOCKING PLANTS AT CROSSINGS, JUNCTIONS, DRAWBRIDGES, IN YARDS AND AT SIDINGS OF RAILROADS AND STREET RAILROADS.

Issued under authority of Public Utilities Act. Effective March 1, 1928.

Approved February 6, 1928. Authorized by C. R. C. Decision 19319, Case 2451.

It is hereby ordered, by the Railroad Commission of the State of California that the following regulations relating to the construction,

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reconstruction, maintenance and operation of interlocking plants at crossings, junctions, drawbridges, in yards and at sidings of railroads and street railroads, shall hereafter be observed in this state unless otherwise authorized or directed by the Commission.

DEFINITIONS.

(a) The term "interlocking plant" as used in this order shall be defined as including manually or automatically controlled plants and/or installations operated by remote control.

(b) The limits of an interlocking plant shall be defined by the home signals which are located farthest from the point intended to be protected on each track. Such appliances as distant signals, track circuits, annunciators, etc., which are located beyond the interlocking limits defined, shall be classed as auxiliary parts.

GENERAL REQUIREMENTS.

1. Plans and construction shall be approved.

(a) No interlocking plant shall hereafter be constructed or reconstructed, nor shall any changes be made in the locking or in the location of any unit thereof until plans and specifications for such construction, reconstruction or other changes shall have been filed with and approved by the Commission.

(b) When the plans are submitted to the Commission for its approval, the application for such approval must be signed by the general manager of the carrier which is to make the installation. The plans and profiles shall be signed by the general manager or by the responsible signal officer of each interested carrier. The application shall state which carrier will have charge of the construction, which of the maintenance and which of the operation of the interlocking plant.

2. Plans to be filed.

The following plans shall accompany the application of carrier for approval of construction, reconstruction or other change in interlocking plants:

(a) A general ground plan, drawn to convenient scale, but preferably 100 feet per inch, which shall show the location of all tracks in the vicinity of the crossings, junction or yard; location of the tower; location of all derails, signals, locks, switch points and other special parts of the plant.

(b) A profile of each main or branch line intersecting at the crossing, junction or yard, and/or connecting with the tracks controlled by the interlocking plant, which shall show such main or branch line through the interlocking plant and for a distance of not less than one (1) mile outside of home signal limits. Such profile shall show, in addition to

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the ground and grade lines, the elevations and rates of grade, the location, character and dimensions of all bridges, culverts and way structures, and such other information as is usually contained upon standard profiles of railroads and street railroads.

(NOTE.—Number of copies of such exhibits filed with the application made informally shall be one greater than the number of interested carriers. If formal application is made, additional prints must also be filed with each copy of formal application.)

3. In preparing exhibits, the American Railway Association, Signal Section, symbols shall be used.

4. Commission will approve plans.

(a) When plans submitted are found to be satisfactory, they will be approved by the Commission and a copy marked "Approved" sent to each interested carrier.

(b) If the work is not commenced within one year after date of approval, a new approval must be obtained.

5. Application for inspection.

(a) When the plans for an interlocking plant have been approved by the Commission and its construction or reconstruction has been completed, application shall be made to the Commission for inspection. The application for inspection shall be accompanied or preceded by a corrected copy of the ground plan if any change has been made from the plan originally submitted.

(b) There shall also be filed with or preceding the application for inspection a locking sheet, a dog chart and a circuit plan. For automatic interlocking, only the circuit plans need be filed.

(c) Application for inspection by letter or telegram shall be made by the carrier having charge of construction five days prior to date of initial operation. Plans, charts, etc., called for in section 5 (b) shall be forwarded to the Commission on or before the same day. After receipt of the above application for inspection the Commission will notify applicant of the date of inspection.

(d) When the carrier in charge of the construction or reconstruction of an interlocking plant applies to the Commission for inspection and approval of same as hereinbefore provided, it shall be the applicant's duty to notify all other interested carriers of such application, and of the date upon which the inspection will be made, that they may have representatives upon the ground if they so desire.

6. Approval of interlocking plant.

After an interlocking plant has been inspected as provided for in section 5, and found to have been completed in accordance with the plans and specifications, it will be approved. The representative of the Commission inspecting the interlocking plant may, at his discretion,

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for what appears to him good cause, direct changes necessary for the safe operation of the interlocking plant and direct that the interlocking plant be not operated until such changes are made, subject, however, to the action of the Commission thereafter.

GENERAL SPECIFICATIONS.

7. Type of signals.

Signals shall be semaphore or light signals of approved type and so constructed that the failure of any part directly controlling the signal will cause it to display its most restrictive indication.

8. Signal indications.

(a) Semaphore signals shall display the following lights at night:

(1) A green light to indicate "proceed."

(2) A yellow light to indicate "caution."

(3) A red light to indicate "stop."

(b) Light signal color indications for "proceed," "caution" and "stop" shall correspond to those outlined for semaphore signals.

9. Location of signals.

All fixed signals shall be located above or adjacent to the track which they govern, and preferably on the right-hand side of the track governed.

10. Home signals.

(a) Home signals operated mechanically shall be pipe connected.

(b) When home signals are semi-automatic and conditions are such as to require it, means may be provided for moving a train into an occupied block by use of an approved type of fixed signal.

(c) High speed signals located in automatic block signal territory shall be semi-automatic and form a part of the block signal system.

(d) Where a train order signal is located within interlocking limits and controlled from the interlocking plant, such signal must be so interlocked that it can not be cleared until the preceding home signals have first been cleared.

(e) The home semaphore arm shall have a square end. When two (2) signal arms are used on the home signal mast, the top arm shall in all cases govern the main or high speed route and the lower arm the low speed or diverging route.

11. Distant signals.

(a) Power operated distant signals shall be used on all high speed lines and they shall be located a sufficient distance from home signals to insure safe operation, but in no case more than 6000 feet therefrom.

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(b) On low speed main lines, or where conditions warrant, the location of distant signals may be varied from the preceding requirements or by permission they may be eliminated where obviously unnecessary.

(c) Distant signals shall be semi-automatic.

(d) Where a two-position semaphore signal is used, it shall be distinguished by a notch cut in the end of semaphore arm. Its connection with the home signal through the interlocking shall be such that it will display its most restrictive indication when home signal is at "stop."

12. Signal indication locking.

Electric locks or other suitable devices shall be provided in connection with all signals for the purpose of insuring against the route being changed until the signal displays its most restrictive indication.

13. Derails.

(a) Split point derails shall be located on high speed tracks, with a minimum distance from the drawbridge, crossing or fouling point, which they are intended to protect, as follows: Where the grade is practically level on steam railroads six hundred (600) feet, on electric interurban or street railroads four hundred (400) feet. Not less than ten (10) feet for each one-tenth of one per cent grade shall be added to the above minimum distance for grades descending toward the drawbridge, crossing or fouling point, and not more than ten (10) feet for each one-tenth of one per cent grade shall be deducted in case of ascending grades; provided, however, that no derail shall be placed less than four hundred (400) feet for steam railroads nor less than two hundred (200) feet for electric railroads from the drawbridge, crossing or fouling point.

(b) Pocket derails shall be located not less than seventy-five (75) feet from the crossing or fouling point.

(c) Backup derails, when used, shall be located as follows: On steam railroads not less than two hundred (200) feet and on electric interurban or street railroads one hundred and fifty (150) feet from the crossing or fouling point.

(d) Derails on all side tracks and spur tracks, and tracks other than main tracks, shall be located a sufficient distance from the fouling-point to insure ample protection, and in no case less than fifty (50) feet. Such derails shall be so placed that a derailed train or car will be diverted away from the main track.

(e) On tracks where the character of traffic and/or local conditions justify, as at junctions, in yards or on passing tracks, the above specifications for location of derails may be varied from or derails may be omitted by special permission, granted at the time of submission of plans for approval.

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(f) Guard rails shall be provided in connection with all high speed derails. Guard rails shall extend at least one-half (½) the distance from the derail to the fouling point, and shall be located between the track rails parallel with and not less than eight (8) inches from ball of guard rail to ball of continuous main rail. Guard rail shall be fastened to the track with at least equal security and be approximately the same weight as the running rails.

14. Facing point protection.

High speed main line facing point switches, derails and movable point frogs shall be equipped with facing point locks or equivalent electrical protection.

15. Automatic train control.

Automatic train stopping devices, which are a part of a system of automatic train control approved by this Commission or the Interstate Commerce Commission, may be used in lieu of derails. In such devices, the means for automatically applying the train brakes shall be located a sufficient distance in advance of the fouling point as to insure a safe braking distance.

16. Time locks and electric locking.

(a) Either time locks or approach locking shall be provided in connection with all home signals. When a distance signal is used, approach locking shall be provided to be effective at least 1500 feet in advance thereof.

(b) Track circuits and electric locking must be provided. Circuits shall be so arranged that routes can not be changed until trains or cars have passed through the locking limits or over certain predetermined sections. Suitable emergency releases may be provided in such cases.

17. Detector bars.

Prior to January 1, 1930, all detector bars now in place shall be replaced or supplemented with electric track circuit locking.

18. Locks and seals.

(a) Provision shall be made in interlocking machines, for locking or sealing the mechanical locking in such a manner as to prevent interference by anyone except authorized employees.

(b) Power interlocking cabinets, time locks, time releases, emergency switches and indicators shall be sealed. Relay cases shall be locked.

19. Cross protection.

All circuits shall be designed and arranged, as far as practicable, to prevent the operation of apparatus by cross or grounds.

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20. Annunciators.

Annunciators shall be installed where operating conditions require them.

21. Automatic interlocking.

(a) Home signals shall normally indicate stop, clearing only on the approach of the train when conflicting routes are clear between home signal limits and no opposing or conflicting train has received clear signal. Home signals shall be located not less than 500 feet nor more than 750 feet from crossing.

(b) Distant signals shall be installed and so arranged as to indicate caution when the home signal indicates stop, and controlled by track circuit between the distant and home signal. Distant signals shall be located a sufficient distance from the home signal to insure safe operation.

(c) Preliminary track circuit shall be installed and shall extend back of the distant signal 3000 feet where speed is sixty miles per hour, decreasing fifty feet for each mile per hour under and increasing fifty feet for each mile per hour over such maximum speed.

(d) At all crossings protected by automatic interlocking a speed restriction of twenty miles per hour shall be enforced.

22. Materials and workmanship.

Materials and workmanship shall be first class throughout, and the interlocking plant constructed in every way to warrant the safe and expeditious performance of the functions for which it is designed.

MAINTENANCE AND OPERATION.

23. Shall be properly maintained and operated.

Interlocking plants shall be maintained and operated in accordance with rules which shall be submitted to and approved by the Commission. Such rules shall include the use of hand signals, when fixed signals become inoperative.

24. No interlocking plant shall be abandoned without the permission of this Commission.

25. Reports to the Commission.

Quarterly reports of interlocking plant performance shall be made to the Commission on the first day of January, April, July and October of each year, by the carrier on each interlocking plant maintained and operated by it. Such reports shall be filed within thirty days after the end of the quarter for which they are made and shall be prepared in the manner prescribed and upon the forms provided by the Commission.

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GENERAL.

26. Order retroactive—Time limit for changes.

All interlocking plants, manually or automatically controlled, installed for the protection of either a grade crossing or a drawbridge shall conform with the terms of this order on and after January 1, 1930, except installations made during the effective time of General Order No. 33, and conforming therewith.

27. Exemptions.

If, in a particular case, exemption from any of the requirements herein is desired, the Commission will consider the application of a carrier for such exemptions when accompanied by a full statement of the conditions existing and the reasons why such exemption is asked. It is to be understood that any exemption so granted shall be limited to the particular case covered by the application.

The Commission reserves the right to modify any of the provisions of these rules in specific cases, when, in the Commission's opinion, public interest would be served by so doing.

This order shall be effective on and after the first day of March, 1928.

Approved and dated at San Francisco, California, this sixth day of February, 1928.

RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA,
By H. G. MATHEWSON, Secretary.

DECISION No. 19344.

CALIFORNIA TRANSIT COMPANY, A CORPORATION,

vs.

AUTO TOURS CONTINENTAL CLUB, AUTO TOURISTS COOPERATIVE CLUB, PACIFIC AUTO TRAVEL CLUB, NATIONAL AUTO TRAVEL CLUB, R. MILLER, MISS RUTH HOGUE, W. C. WALLS, E. HUISCH, WALTER THAYER, E. J. GUNN, D. T. SOADY, ALLEN JACKSON, JOHN HENRY, JACK O'NEILL, J. O. BRUCHFIELD, JOHN DOE WYCOFF, JOHN DOE KING, JOHN DOE HUNT AND JOHN DOE SHELLY.

Case No. 2425.

Decided February 6, 1928.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION.—Certain automotive tour clubs and individuals found to have been operating automotive passenger service illegally, ordered to discontinue operations.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION—TRAVEL CLUBS.—Practice of selling membership tickets in auto travel clubs constitutes a violation of section 79 of the Public Utilities Act in that aid and assistance are thereby rendered to individuals unlawfully operating automobile stages as common

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carriers of passengers between fixed termini or over regular routes, for compensation, over the public highways in violation of section 50¼ of the Public Utilities Act.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION—TRAVEL CLUBS.—Individuals operating auto travel clubs were ordered to cease and desist from aiding or abetting in the violation of the provisions of section 50¼ of the Public Utilities Act by the sale of membership certificates in such clubs, or in any other manner in violation of the act.

L. G. Markel, for Complainant.
B. E. Kragen, for A. H. Wycoff and Auto Tourists Cooperative Club, Defendants.
V. J. Etzkorn, for Southern Pacific Company.

BY THE COMMISSION.

OPINION.

California Transit Co., a corporation, has filed a complaint against Auto Tours Continental Club, Auto Tourists Cooperative Club, Pacific Auto Travel Club, National Auto Travel Club, R. Miller, Miss Ruth Hogue, W. C. Walls, E. Huisch, Walter Thayer, E. J. Gunn, D. T. Soady, Allen Jackson, John Henry, Jack O'Neill, J. O. Bruchfield, John Doe Wycoff, John Doe King, John Doe Hunt and John Doe Shelly. The complaint alleges (1) that defendants, and each of them, have been and now are engaged in transporting passengers for compensation as passenger stage corporations over regular routes within the State of California and over the public highways thereof, without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation, or any other certificate, order or permit so to do, contrary to the provisions of the Public Utilities Act of the State of California; (2) that none of the defendants nor any of their predecessors in interest were actually operating in good faith or at all prior to May 1, 1917, or prior to the effective date of chapter 213 of Statutes of 1917 of the State of California approved May 10, 1917, and that the operations of defendants and each of them are in violation of the Public Utilities Act of the State of California; (3) that the regular routes over which defendants and each of them have been and are now transporting passengers as passenger stage corporations for compensation are between San Francisco and Los Angeles via Tracy, Modesto, Fresno, Tulare and Bakersfield, known as the Valley Route, serving all intermediate points, and also between San Francisco and Los Angeles via San Jose and Salinas, known as the Coast Route, serving all intermediate points; (4) that defendants and each of them have been and are now operating between fixed termini over the state highways as passenger stage corporations between San Francisco and Oakland on the one hand, and all points in the State of California for which passengers can be secured on the other hand, and in so doing defendants, and each of them, charged, demanded and collected fares

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from passengers so transported upon an individual fare basis; and (5) that complainant is now operating over the routes between San Francisco and Los Angeles via Tracy, Modesto, Fresno and Bakersfield, serving all intermediate points, under and by virtue of authority granted by the Railroad Commission and the alleged unlawful operation of defendants, and each of them, has resulted in injury to complainant, seriously injuring its business and being detrimental to the public and to the public service offered and furnished by complainant.

Complainant prays for an order of this Commission finding defendants, and each of them, guilty of violating the provisions of the Public Utilities Act and imposing penalties therefor; requiring defendants, and each of them, to cease and desist all transportation of passengers for compensation under operation either as a passenger stage corporation or common carrier, or as a carrier of passengers between fixed termini or over a regular route or routes upon the public highways in the State of California and particularly between San Francisco, Oakland and Los Angeles via the Valley or Coast routes.

Defendants Auto Tourists Cooperative Club and A. H. Wycoff (herein complained of as John Doe Wycoff), duly filed their answer herein, said answer denying the material allegations of the complaint.

A public hearing on this complaint was conducted by Examiner Handford at San Francisco, the matter was duly submitted and is now ready for decision.

Chas. H. Wilkinson, employed as an investigator for complainant, testified regarding trips between San Francisco and Ventura, Fresno and Modesto, and between Oakland and Fresno in which the service of some of the defendants was used. On August 4, 1927, this witness, upon making inquiry at the Dale-Tallac Hotel, 140 Ellis Street, San Francisco, for transportation to Ventura was advised by defendant A. H. Wycoff that the rate would be $8.50, that a deposit of $1.50 would be required. Upon payment of the $1.50 witness was furnished a certificate of membership, No. 422, in the Auto Tourist Cooperative Club (Exhibit No. 2). The same day witness was transported from San Francisco to Ventura by R. Miller, defendant herein, paying a fare of $7, payment being made at Salinas and receipt therefor being given by said R. Miller (Exhibit No. 3). Witness returned from Ventura to San Francisco on August 8, 1927, using the service of defendant R. Miller and paying as fare the sum of $7.50 for which receipt was given (Exhibit No. 4). Witness inquired of defendant R. Miller as to the frequency of his trips out of San Francisco and was told that they averaged two trips per week.

On August 26, 1927, witness saw defendant A. H. Wycoff at the Dale-Tallac Hotel, 140 Ellis street, San Francisco, and asked for transportation from San Francisco to Fresno. Witness was advised

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by defendant Wycoff that service was available every day and that it would be necessary to purchase another card. An amount of $1.50 was paid by witness to defendant A. H. Wycoff for which he received membership card No. 232 in the Auto Tourist Cooperative Club, dated August 26, 1927 (Exhibit No. 5). Witness at the time he paid for membership certificate No. 232 on August 26, 1927, was furnished a receipt in amount $3 covering the purchase of membership certificate No. 232 and also membership certificate No. 422 which had previously been purchased on August 4, 1927, receipt being signed I. Brown by defendant A. H. Wycoff (Exhibit No. 6). Witness was told by defendant A. H. Wycoff at the time he paid the $1.50 for membership certificate No. 232 that the fare from San Francisco to Fresno would be $7 and that the car would depart at noon on that day. At noon, witness was directed by defendant A. H. Wycoff to Peerless Sedan Automobile No. 1-486-671, 1927 California license, driven by defendant Walter Thayer and was transported to Fresno via Oakland, Livermore, Tracy to Fresno, the balance of the fare being paid to the driver, defendant Walter Thayer, at Fresno, an amount of $4.50 being paid for which receipt was given (Exhibit No. 7). During the trips to Fresno witness was informed by defendant Walter Thayer that defendant averaged two and sometimes three trips per week.

On August 29, 1927, witness called at the office of the Auto Tourist Continental Club, No. 1202 Franklin street, Oakland, and made inquiry regarding transportation from Oakland to Fresno. He was informed by defendant D. T. Soady that cars left for Fresno twice daily, that the fare was $6 and that "you will have to take out a card and pay $1.50 deposit." Witness paid defendant D. T. Soady the sum of $1.50 for which he received certificate of membership No. 296 in the Auto Tourist Continental Club, dated August 29, 1927 (Exhibit No. 8). A receipt signed by defendant D. T. Soady was given to witness covering the payment of the $1.50 (Exhibit No. 9). Witness was transported to Fresno from the office of the Auto Tourist Continental Club, 1202 Franklin street, Oakland, leaving at 7.45 p.m. on August 29, 1927, paying the driver, defendant John Henry, the sum of $4.50 and receiving a receipt therefor (Exhibit No. 10). During the trip witness discussed with the driver, defendant John Henry, the frequency of this defendant's trips between Oakland and Fresno and was advised defendant made as many trips as he could.

On September 1, 1927, witness called at the office of the Auto Tourist Cooperative Club at 57 Taylor street, San Francisco, and made inquiries regarding a trip by motor stage from San Francisco to Fresno. Witness was advised that the fare would be $6 and that he would have to take out a card, for which he would have to pay $1.50. Witness

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paid $1.50 for certificate of membership No. 432 in Auto Tourist Continental Club dated September 1, 1927 (Exhibit No. 11). Witness also procured a receipt for the payment of the $1.50 under date of September 1, 1927, signed by defendant W. C. Walls (Exhibit No. 12). Witness was directed by defendant W. C. Walls to the automobile in which the journey was to be made and was transported from San Francisco to Fresno by defendant E. Huisch, paying said defendant the sum of $4.50 for which witness was furnished receipt dated September 1, 1927, in amount $4.50 signed by defendant E. Huisch (Exhibit No. 13). The trip to Fresno was made via Oakland, nine passengers having been transported from Oakland to Fresno in a Hudson sedan of 7-passenger capacity, all the passengers, excepting witness, being destined to Los Angeles.

On September 3, 1927, witness went to the Auto Tourist Continental Club at 57 Taylor street, San Francisco, and made inquiries regarding transportation San Francisco to Modesto, being advised by defendant W. C. Walls that it would be necessary to take out another card and that the complete fare would be $3.75. Witness paid defendant W. C. Walls the sum of $1.50, receiving therefor certificate of membership No. 512 in the Auto Tourist Continental Club, dated September 3, 1927 (Exhibit No. 15), and receipt signed by W. C. Walls, dated September 3, 1927, in an amount $1.50 (Exhibit No. 16). Witness traveled to Modesto via Oakland where passengers were picked up at No. 1202 Franklin street, Oakland, Tracy to Modesto, paying driver of the car $2.25 for which he received receipt dated September 3, 1927, signed by Allen (Exhibit No. 17).

On September 8, 1927, witness made inquiry at 1202 Franklin street, Oakland, for transportation Oakland to Fresno and was advised he woud have to pay $5 and to take out another ticket. Witness purchased certificate of membership in the Auto Tourist Continental Club, No. 260, dated September 8, 1927 (Exhibit No. 18), paying therefor the sum of $1.50 for which he was furnished a receipt dated September 8, 1927, signed by defendant D. T. Soady (Exhibit No. 19). The trip to Modesto was made on the evening of September 8, 1927, leaving from No. 1202 Franklin street, Oakland, witness being directed to the car by defendant E. J. Gunn, and the route followed being via Livermore, Tracy, Modesto and the car continuing to Fresno. Witness paid the driver $3.50 in Modesto and received a receipt therefor under date of September 8, 1927, signed by defendant E. Huisch (Exhibit No. 20). During the trip witness discussed with the driver the frequency of the trips made over the route and was advised that as many trips as possible were made, the method of operation being that the various clubs would call him up when they had a load of passengers and that he would then depart.

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A. H. Wycoff, defendant herein, testified that he operated a travel club, formerly at No. 140 Ellis street and at present at No. 34 Turk street, San Francisco; that the club was operated under the fictitious name of Auto Tourist Cooperative Club; and that in connection with the operation of the club he neither owned or had any interest in automobiles, control or management of drivers or control over fares which were charged for transportation.

In the conduct of the club witness placed advertisements in the newspapers to attract persons who contemplated automobile trips and also made arrangements with owners of cars who were seeking to transport passengers to destinations in the State of California and to outside points. A fee of $1.50 was exacted from all prospective passengers and from the owners or operators of the automobiles in which the passengers were transported. This fee entitled the purchaser to a certificate of membership in the Auto Tourist Cooperative Club, same good for a period of thirty days from its date of issuance and witness states that the fee as paid for the certificate of membership does not cover any portion of the transportation charge but merely his compensation for bringing the prospective passenger and car operator together; that if satisfactory arrangements can not be made between the passenger and the car operator he would, upon request, refund the amount paid for the certificate of membership. Car operators were charged the same fee for membership certificates as were prospective passengers, receiving a similar certificate good for a period of thirty days from the date of issuance. Witness has also issued certificates of membership for which a fee in excess of $1.50 has been assessed, such certificates, however, covering arrangements for transportation to points beyond the State of California and in so far as such certificates have to do with arrangements for interstate journeys they will not be further referred to. Witness has no connection with any other travel bureau or club.

The record shows that by reason of the sale of membership certificates in the various travel clubs passengers were secured who were thereafter transported by certain of the defendants; that the membership certificates were paid for as a portion of the fare quoted by the defendants operating travel clubs; that if the journey was not made after the purchase of the membership certificate the amount paid for the certificate would be refunded upon request. It is obvious that the practice of selling membership tickets in the travel clubs constitutes a violation by certain of the defendants of section 79 of the Public Utilities Act in that aid and assistance is thereby rendered other defendants unlawfully operating automobile stages as common carriers of passengers between fixed termini or over regular routes, for com-

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pensation, over the public highways of the State of California in violation of the provisions of section 50¼ of the Public Utilities Act.

After full consideration of the testimony and exhibits herein we are of the opinion and hereby find the following facts:

I. That the defendant R. Miller has operated auto stages as a common carrier for compensation between the fixed termini of San Francisco and Ventura and over a regular route between said termini, without having first secured from this Commission a certificate of public convenience and necessity authorizing said defendant so to do, in violation of the provisions of section 50¼ of the Public Utilities Act (chapter 91, Statutes of 1915, and effective amendments thereto).

II. That the defendant E. Huisch has operated auto stages as a common carrier for compensation between the fixed termini of San Francisco and Oakland on the one hand and Fresno on the other hand, and over a regular route between such termini, in violation of the provisions of section 50¼ of the Public Utilities Act.

III. That the defendant John Henry has operated an auto stage as a common carrier for compensation between the fixed termini of San Francisco and Fresno and over a regular route between said termini, in violation of the provisions of section 50¼ of the Public Utilities Act.

IV. That the defendant Walter Thayer has operated an auto stage as a common carrier for compensation between the fixed termini of San Francisco and Fresno and over a regular route between said termini, in violation of the provisions of section 50¼ of the Public Utilities Act.

V. That the defendant A. H. Wycoff, doing business under the fictitious name of Auto Tourist Cooperative Club, has by the conduct of said Auto Tourist Cooperative Club aided and abetted defendants R. Miller and E. Huisch in the violation of the provisions of section 50¼ of the Public Utilities Act.

VI. That the defendant W. C. Walls in the conduct of the business of the Auto Tourist Continental Club has aided and abetted defendant E. Huisch in the violation of the provisions of section 50¼ of the Public Utilities Act.

VII. That the defendant D. T. Soady in the conduct of the business of the Auto Tourist Continental Club has aided and abetted defendants John Henry and E. Huisch in the violation of the provisions of section 50¼ of the Public Utilities Act.

VIII. No evidence having been presented as to defendants Pacific Auto Travel Club, National Auto Travel Club, Miss Ruth Hogue, E. J. Gunn, Allen Jackson, Jack O'Neill, J. O. Bruchfield, John Doe King, John Doe Hunt and John Doe Shelly, the complaint as to such defendants should be dismissed.

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ORDER.

A public hearing having been held on the above entitled complaints, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order;

It is hereby ordered,

I. That defendant E. Huisch immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over regular routes over the public highways of the State of California and particularly between the fixed termini of San Francisco and Oakland on the one hand and Fresno or Los Angeles on the other hand, and not resume such operation until said E. Huisch shall have secured from this Commission a certificate declaring that public convenience and necessity require such operation in accordance with the provisions of section 50¼ of the Public Utilities Act.

II. That defendant R. Miller immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over regular routes over public highways of the State of California, and particularly between the fixed termini of San Francisco and Ventura or Los Angeles via the Coast Route, and not resume such operation until said R. Miller shall have secured from this Commission a certificate declaring that public convenience and necessity require such operation in accordance with the provisions of section 50¼ of the Public Utilities Act.

III. That defendant John Henry immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over a regular route over the public highways of the State of California and particularly between the fixed termini of San Francisco and Fresno over a regular route between such termini, and not resume such operation until said John Henry shall have secured from this Commission a certificate declaring that public convenience and necessity require such operation in accordance with the provisions of section 50¼ of the Public Utilities Act.

IV. That defendant Walter Thayer immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over regular routes over the public highways of the State of California, and particularly between the fixed termini of San Francisco and Fresno and over regular routes between such termini, and not resume such operation until said Walter Thayer shall have secured from the Railroad Commission a certificate declaring that public convenience and necessity require such operation in accordance with the provisions of section 50¼ of the Public Utilities Act.

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V. That defendant A. H. Wycoff, doing business under the fictitious name of Auto Tourist Cooperative Club, immediately cease and desist from aiding or abetting in the violation of the provisions of section 50¼ of the Public Utilities Act by the sale of membership certificates in the Auto Tourist Cooperative Club or in any other manner in violation of said Public Utilities Act.

VI. That defendant W. C. Walls, doing business under the fictitious name of Auto Tourist Continental Club, immediately cease and desist from aiding or abetting in the violation of the provisions of section 50¼ of the Public Utilities Act by the sale of membership certificates in the Auto Tourist Continental Club or in any other manner in violation of said Public Utilities Act.

VII. That defendant D. T. Soady immediately cease and desist from aiding or abetting in the violation of the provisions of section 50¼ of the Public Utilities Act by the sale of membership certificates in the Auto Tourists Continental Club or in any other manner in violation of said Public Utilities Act.

It is hereby further ordered, that this complaint in so far as it refers to defendants Pacific Auto Travel Club, National Auto Travel Club, Miss Ruth Hogue, E. J. Gunn, Allen Jackson, Jack O'Neill, J. O. Bruchfield, John Doe King, John Doe Hunt, and John Doe Shelly, be and the same hereby is dismissed.

It is hereby further ordered, that the secretary of this Commission serve a certified copy of this order upon the district attorneys of the counties of Alameda, San Joaquin, Fresno, Stanislaus, Madera, Merced, Tulare, Kern, Santa Clara, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, city and county of San Francisco, and the Board of Public Utilities and Transportation of the city of Los Angeles.

It is hereby further ordered, that the secretary of this Commission personally serve or cause to be personally served upon each of the following defendants, to wit: E. Huisch, R. Miller, John Henry, Walter Thayer, A. H. Wycoff, W. C. Walls, and D. T. Soady a copy of this order.

The effective date of this order is hereby fixed as twenty days from the date hereof.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION NO. 19345.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR INCREASE OF TELEPHONE RATES.

Application No. 13795.

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Decided February 6, 1928.

PROCEDURE—MOTION TO INSPECT.—Motion of cities to inspect books and records of The Pacific Telephone and Telegraph Company granted and examiner appointed to supervise said inspection.

PLEADING AND PROCEDURE—MOTION TO INSPECT RECORDS.—In passing on a motion of protesting cities to inspect books and records of an applicant seeking an increase in rates, and which has filed exhibits in the form of summations of such books and records, the Railroad Commission is acting in its judicial or quasi-judicial capacity, and must look to the practices of the courts.

EVIDENCE—BEST EVIDENCE RULE—SUMMARY OF RECORDS.—Before the Railroad Commission, as before courts of law and equity, witnesses are allowed to appear and present summations of voluminous accounts and records themselves constituting the best evidence of the facts contained therein. Under and by virtue of the Commission's judicial functions, it is empowered to accord full opportunity to cities protesting a rate increase to examine and inspect applicant's accounts and records upon which its exhibits are based. (Wigmore on Evidence, Sec. 1230; *Elmira Roofing Co.* vs. *Gould*, 42 Atl. 1002; *People* vs. *Doble*, 53 Cal. App. Dec. 321, 257 Pac. 81; *People* vs. *Sawhill*, 132 N. E. 477.)

PLEADING AND PROCEDURE—INSPECTION OF RECORDS.—In granting protestants' motion to inspect books and records, such records need not and should not be taken from the custody and control of the applicant; they should not be subject to examination and inspection either at a time or in a manner which would unnecessarily interfere with the current business of applicant or with an investigation being conducted by the Commission by virtue of its inquisitorial powers, but the inspection and examination should be surrounded with appropriate safeguards.

BY THE COMMISSION.

ORDER GRANTING MOTION FOR INSPECTION OF BOOKS AND RECORDS AND APPOINTING EXAMINER TO SUPERVISE SAID INSPECTION.

Applicant herein has filed numerous exhibits which may be described in general as summations of voluminous documents, accounts and records. The cities of San Francisco, Oakland, Berkeley, Alameda, Piedmont and Albany, which have appeared herein and are responsible parties to this proceeding, request access to these documents, accounts and records with a view (1) properly to cross-examine in respect to the company's exhibits; (2) to check said exhibits as to their accuracy, and (3) as occasion demands, to present their own independent summations of the facts disclosed by such inspection. The matter was argued before this Commission sitting *en banc*, on February 4, 1928, at which time the applicant appeared to resist the granting of the motion.

In view of the importance of this proceeding and the vast amount of work involved in properly checking and examining the supporting data upon which the applicant's exhibits are based, and to the end that the facts may be placed before us in such form that a final determination may be properly grounded, it is our opinion that these responsible parties should be accorded every reasonable opportunity to make an independent check and investigation of all such supporting data. In

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passing on this motion we are acting in our judicial or quasi-judicial capacity, and it would seem to follow that we must look to the practices of the courts to discover the solution to this problem.

Before this Commission, as before courts of law and equity, witnesses are allowed to appear and present summations of voluminous accounts and records, and although these accounts and records themselves constitute the best evidence of the facts contained therein their summation is permitted, since otherwise hearings would have no end. The right to present evidence in this form is, however, subject to certain conditions and limitations. As declared in Wigmore on Evidence:

> "Most courts require, as a condition, that the mass thus summarily testified to shall, if the books seem to require it, be placed at hand in court, or at least be made accessible to the opposing party, in order that the correctness of the evidence may be tested by inspection if desired, or that the material for cross-examination may be available." (2d Ed. (Sec. 1230, Vol. 2, p. 826).)
>
> "But in such cases, unless there is some legal excuse for not producing the books of account from which the witness has obtained the results testified to, they must be produced, if required by the opposing party, for examination, or to enable him to cross-examine the witness." (*Elmira Roofing Co.* vs. *Gould*, Conn. 1899, 42 Atl. 1002, 1006, citing Greenleaf on Evidence, pp. 115, 116.)

The same conclusion was expressed by the Supreme Court of this state in the recent case of *People* vs. *Doble* (1927), 53 C. A. D. 321; 257 Pac. 81. There a summation of voluminous accounts was held to be admissible, but the court was careful to say that:

> "This summary was admissible under subdivision 5 of section 1855, Code of Civil Procedure. The books were proven to be voluminous, the record of sales going into the number of thousands. Wigmore on Evidence, Sec. 1230; *McPherson* vs. *Milling Co.*, 44 Cal. App. 491, at page 495, 185 Pac. 803; *People* vs. *Dole*, 122 Cal. 486, at page 496, 55 Pac. 581, 68 Am. St. Rep. 50; *San Pedro Lumber Co.* vs. *Reynolds*, 1212 Cal. 75, at page 86, 53 Pac. 410. It is not necessary that the books themselves be offered in evidence, but it is sufficient if they are available or produced in order to afford the opposite party an opportunity to inspect, cross-examine, or make a similar summary. 16 Corpus Juris, 615, Sec. 1211."

A similar conclusion was declared in *People* vs. *Sawhill* (1921), 299 Ill. 393; 132 N. E. 477, 481.

It would seem ridiculous to assume that this Commission, sitting in its judicial capacity to take the testimony desired to be presented in this proceeding, is so impotent as not to be able to provide appropriate machinery, consistent with constitutional safeguards, to meet the practical situation presented in the present instance, and in view of the law as expressed in the above decisions, we are of the opinion that we are empowered, under and by virtue of our judicial functions, to see to it that these parties be accorded full opportunity to examine and inspect the applicant's accounts and records upon which its exhibits are based.

As to these supporting records it can hardly be asserted by the applicant that they are immaterial or irrelevant. As to books and records

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of the applicant not in the category referred to there may be a different situation. That poblem will be met when the occasion demands.

The form of order which should be made requires some consideration. Books and records need not and should not be taken from the custody and control of the applicant. They should not be subject to examination and inspection either at a time or in a manner which would unnecessarily interfere with the current business of the applicant or with the investigation now being conducted by the Commission by virtue of its inquisitorial powers. The inspection and examination should be surrounded with appropriate safeguards. It may frequently happen that minor and detailed explanations of records and documents will facilitate the examination—explanations which need not encumber the record of our formal hearing but which, as a precautionary matter, and for the protection of the parties, should be made a matter of record.

It would seem appropriate, therefore, that the immediate supervision and control of the examination and inspection be referred to an examiner of this Commission, and that, if suitable arrangements can be made, the inspection and examination be had at a place convenient and accessible to the place where the books and records are now kept. An appropriate order will be made along the lines indicated above. It should not be necessary to require the use of subpenas in a matter of this kind, as a failure of the applicant to produce the books and records of the category referred to would lay the foundation for motions to strike the exhibits from the record. To this end, good cause appearing:

It is hereby ordered,

(1) That the motion of the cities of San Francisco, Oakland, Berkeley, Alameda, Piedmont and Albany for appropriate orders permitting inspection and examination of books and records of applicant, so far as they constitute supporting data for exhibits on file herein, be granted.

(2) That said inspection and examination be had under the supervision of Lester S. Ready, who is hereby appointed an examiner of this Commission for the purposes of this order, and to whom this matter is hereby referred, and who is hereby authorized to fix the place of such examination and inspection.

(3) That request for books and records shall be made to said examiner who may determine the time for their examination and inspection, which shall be made in the presence of an employee of this Commission who may be designated by said examiner, and in the presence of a representative of the company, if it so desires.

(4) Said examiner shall keep a record of all books and records examined or inspected and shall report the same to this Commission.

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(5) Further orders may be made from time to time to carry out the purpose and intent hereof.

(6) The secretary of this Commission is hereby directed to place a copy of this order in the file of this proceeding and to serve copies thereof upon applicant and upon the parties who have filed this motion.

Dated at San Francisco, California, this sixth day of February, 1928.

DECISION No. 19348.

IN THE MATTER OF THE APPLICATION OF TRACY GAS COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF TEN THOUSAND DOLLARS OF ITS CAPITAL STOCK AND EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS OF ITS FIRST MORTGAGE BONDS AND RAISE TWENTY-FOUR THOUSAND NINE HUNDRED DOLLARS IN ORDER TO FINANCE CONTEMPLATED IMPROVEMENTS AND FOR AN ORDER DETERMINING AND FIXING RATES TO BE CHARGED FOR GAS.

Application No. 13295.

(Supplemental.)

Decided February 8, 1928.

SECURITY ISSUES—STOCK—BONDS.—Tracy Gas Company authorized to issue and sell at not less than par $7,000 of its common capital stock, and at not less than 90 per cent of face value and interest $9,000 of its first mortgage 6 per cent bonds.

SECURITY ISSUES—PURPOSE—PAYMENT OF OPERATING EXPENSES.—Salary of a general manager and traveling expenses should not be paid through the issue of stock, bonds or other evidences of indebtedness authorized by this Commission.

Crittenden and Hench, by *George M. Hench*, for Tracy Gas Company.

BY THE COMMISSION.

SUPPLEMENTAL OPINION.

In a supplemental petition filed on December 31, 1927, the Tracy Gas Company asks permission to issue and sell $10,000 of its common capital stock and $18,500 of its first mortgage 6 per cent bonds, at the prices and for the purposes hereinafter stated.

On January 20th the company requested permission to modify the construction contract between applicant and E. A. MacGillivray, referred to in Decision No. 18862, dated October 3, 1927, so as to remove from such construction contract the obligation of E. A. MacGillivray to expend $23,610 for service pipe, meters, testing equipment and appurtenances. The items to be removed from the contract and which will be installed by the company itself, are as follows:

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Name of materials	*Cost to company as per contract October 5, 1927*
Service pipe	$10,600 00
Small pipe	3,000 00
Stop cocks for meters	560 00
Auto truck, signs, tools	2,000 00
Testing equipment	450 00
700 gas meters	7,000 00
Total	$23,610 00

It appears that there is no need at this time for the Tracy Gas Company to expend all of the $23,610 and it has therefore been concluded to release the contractor from the obligation to acquire and install the pipe and equipment mentioned. The $23,610 will be deducted from the next contract payment. This request should be granted.

In the supplemental petition filed on December 31st the Tracy Gas Company reports actual or estimated additional expenditures as follows:

Laying gas mains under Southern Pacific tracks on C street		$200 00
For furnishing and laying extra pipe over and above that provided for in contract with E. A. MacGillivray for completing belt line		2,817 50
For furnishing and laying pipe to community north of and adjacent to the city limits of Tracy, not covered by contract with E. A. MacGillivray		4,912 50
Office equipment		370 00
Office rent, September 1, 1927, to February 1, 1928		575 00
Stenographer's salary, telephone and postage, September 1, 1927, to February 1, 1928		375 00
Accountant's salary, September 1, 1927, to February 1, 1928		250 00
For services of Leon Melekov, as secretary and general manager from December 1, 1926, to February 1, 1928, at the rate of $600 per month		8,400 00
From December 1, 1926, to September 1, 1927	$3,000 00	
From September 1, 1927, to February 1, 1928	5,400 00	
Traveling expenses and general expenses of officers of company		1,612 95
From organization of company to September 1, 1927	$612 95	
From September 1, 1927, to February 1, 1928	1,000 00	
State corporation tax		75 00
For salary of solicitor of gas applications for four months		800 00
Estimated cost of printing consumers' forms		408 66
Attorney's fees		250 00
Working capital		3,853 39
Total		$24,900 00

By Decision No. 17769, dated December 20, 1926, as amended, the Commission authorized Tracy Gas Company to issue $80,000 of stock and $100,000 of bonds for the purpose of constructing its gas plant.

The order of the Commission provides that the stock shall be sold for not less than par and that 17½ per cent of the proceeds realized from the sale of the stock may be used to pay commissions and all other expenses incident to the sale of such stock. It further provides that the bonds may be sold at not less than ninety and accrued interest.

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The net proceeds from the sale of the bonds and stock are to be used for the following purposes and none other:

To pay the cost of land and right of way	$5,000 00
To pay the cost of spur track	1,331 00
To pay contract price	136,000 00
To pay the cost of pole line	530 00
To pay expenses of bond issue including attorney's fees and cost of acquiring franchises and expenses of proceedings before the Railroad Commission	5,000 00
To pay the cost of road	450 00
To provide working capital	3,600 00
To pay miscellaneous expenses	1,281 60
Total	$153,192 60

While the company asks permission to modify its construction contract and deduct $23,610 from such contract, it is its intention to expend the $23,610 for the same purposes as are set forth in the construction contract.

The company alleges that it has been necessary for it to incur expenses or that it will have to incur the expenses mentioned above, in addition to those heretofore submitted, and that therefore it should be authorized to issue $10,000 of additional stock and $18,500 of additional bonds. In Decision No. 18862, dated October 3, 1927, the Commission held that the $612.95 referred to above and the $600 per month salary of Leon Melekov, secretary and general manager from December 1, 1926, to September 1, 1927, should be paid out of the 17½ per cent allowed for commissions and expenses incidental to the sale of the stock or in some manner other than the issue of stock, bonds or other evidences of indebtedness authorized by this Commission. In the supplemental petition filed on December 31, 1927, the company again repeats its request to pay from the proceeds realized from the sale of stock and bonds, the $612.95, as well as the $600 per month salary of Leon Melekov, together with additional traveling expenses and salary from September 1, 1927, to February 1, 1928. In our opinion the salary and expenses ($10,012.95) referred to should not be paid through the issue of stock, bonds or other evidences of indebtedness authorized by this Commission.

An analysis of our decisions will show that we have been more liberal than usual with this applicant, both in the amount allowed for stock-selling commissions and expenses and in the allowance for overhead and general expenses. We made these allowances in order that the residents of Tracy might have gas service. Naturally, there is a limit beyond which such allowances should not go. The interest of the consumer does not, in our opinion, warrant applicant to capitalize any more of its general expenses such as have been mentioned above. We also believe that the salary of the man in charge of the Tracy office and the expenses of printing consumer's forms should be paid

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out of the allowance for working capital. We believe that applicant should be permitted to raise $13,775 additional money through the issue of stocks and bonds, in order that it may complete its gas plant, and for other purposes such as are mentioned in the following order.

Applicant, according to its Exhibit No. 13, proposes to put into effect the following rates:

First 400 cubic feet (or less) per meter per month	$1 50 net
Next 2000 cubic feet per meter per month	2 00 net per M c.f.
All over 2400 cubic feet per meter per month	1 50 net per M c.f.

Minimum charge $1.50 per meter per month.

It also agrees that its rules and regulations affecting the character of service and relations of the company with its customers will conform to the standard rules and regulations of the Railroad Commission, and will be regularly submitted for approval in accordance with General Order No. 58, and that standard forms will be prepared and submitted for approval.

We do not believe that it is necessary for this Commission by formal order to approve the aforementioned rates. The company should forthwith file with the Commission its proposed rates, rules and regulations.

SIXTH SUPPLEMENTAL ORDER.

Tracy Gas Company having applied to the Railroad Commission for permission to issue additional stock and bonds for the purposes indicated in the foregoing supplemental opinion, and to place into effect the rates mentioned in such supplemental opinion, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the Tracy Gas Company may, without formal authority from this Commission, file its proposed rates; that it should be permitted to issue additional stock in the amount of $7,000 and additional bonds in the amount of $9,000; that this application, in so far as it involves the issue of $3,000 of stock and $9,500 of bonds, should be denied without prejudice; that the money, property or labor to be procured or paid for by the issue of the stocks and bonds herein authorized, is reasonably required by applicant, and that the expenditures are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

It is hereby ordered, as follows:

1. Tracy Gas Company may issue and sell on or before May 1, 1928, at not less than par, $7,000 of its common capital stock and at not less than 90 per cent of their face value and interest, $9,000 of its first mortgage 6 per cent bonds. Of the proceeds realized from the sale of the stock, an amount not exceeding 17½ per cent of the par value of the stock sold may be used to pay expenses and commissions incident to the sale of such stock. The remainder of the proceeds obtained

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from the sale of the stock, and the proceeds realized from the sale of the bonds shall be used to pay the following expenses:

Cost of laying gas mains under tracks of Southern Pacific Railroad Company on C street, city of Tracy	$200 00
Cost of furnishing and laying extra pipe over and above that provided for in the contract between Tracy Gas Company and E. A. MacGillivray for completing the belt line in the city of Tracy	2,817 50
To pay the cost of furnishing and laying pipe in the community north of and adjacent to the city limits of Tracy	4,912 50
To pay for office equipment, stenographic service, office rent, accountant's salary, telephone and postage	1,570 00
To pay state corporation tax	75 00
To pay attorney's fees	250 00
For additional working capital	3,853 39

2. That the supplemental petition filed on December 31st in the above entitled matter be and the same is hereby denied without prejudice, in so far as it involves the issue of $3,000 of stock and $9,500 of bonds.

3. That Tracy Gas Company may modify its construction contract with E. A. MacGillivray and omit from such contract the items mentioned in the foregoing supplemental opinion, and deduct from the next contract payment $23,610. The stock and bond proceeds which the Commission heretofore authorized Tracy Gas Company to use to pay part of said construction contract price shall be used to acquire and install the items of equipment which the company is hereby permitted to omit from its contract.

4. The authority herein granted shall become effective when Tracy Gas Company has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

5. Tracy Gas Company shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this eighth day of February, 1928.

DECISION NO. 19360.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC ELECTRIC RAILWAY COMPANY, A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A PERIODICAL AUTOMOBILE STAGE SERVICE WITHIN THE CITY OF SAN BERNARDINO IN THE STATE OF CALIFORNIA.

Application No. 14374.

Decided February 15, 1928.

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CERTIFICATES—AUTO STAGE—PERIODICAL SERVICE.—Pacific Electric Railway Company authorized to operate an auto stage service between San Bernardino and the National Orange Show grounds during the period each year when said show is open.

AUTOMOTIVE TRANSPORTATION—CERTIFICATES—PERIODICAL OPERATION.—Authorization was granted to an interurban railway to operate a coordinated bus service to the grounds of a National Orange Show during the periods when such show is open, without additional fare, in preference to a protestant stage line not coordinated with other services, and proposing to charge an additional fare.

C. W. Cornell and *O. A. Smith*, for Applicant.
Kidd, Schell and Delamer, for Motor Transit Co., Protestant.

BY THE COMMISSION.

OPINION.

Pacific Electric Railway Company, a corporation, has made application to the Railroad Commission for a certificate of public convenience and necessity to operate automobile transportation as a common carrier of passengers between its depot in San Bernardino and the National Orange Show grounds outside the city limits. This service is to be maintained only during the orange show each year. By amendment filed before the hearing, applicant clarified and amplified its offer of service as follows:

That it is proposed to charge a one-way fare of six cents between termini; it is further proposed to operate this line in connection with the local transportation service within the city of San Bernardino by issuing free transfers upon payment of such six-cent fare to or from street car lines within the local fare limits of the city of San Bernardino, as follows: Arrowhead line—Carey avenue; Highland line—Shay; Redlands line—Tippecanoe; Colton line—Richardson street; Riverside line—Pickering Park.

It is further proposed to extend all fares applying on the Los Angeles-San Bernardino line, Redlands-San Bernardino line, Highland-San Bernardino line, Highland-San Bernardino motor coach line, Riverside line and the Arrowhead Springs line to include this bus line to or from the Orange Show without additional charge, and to coordinate this stage line with the other lines of the Pacific Electric System.

A public hearing herein was conducted by Examiner Williams at San Bernardino, February 11, 1928.

Through the testimony of Oscar A. Smith, passenger traffic manager of applicant, it was shown that National Orange Show attendance, transported over the lines of the Pacific Electric in 1927, aggregated 51,800 during the ten-day period the show was open. Of this number, 16,600 received transfers to and from local service. These movements to the Orange Show were wholly by rail over E street, terminating at Urbita Springs. The tracks on this street, at that time, paralleled the tracks of the Pacific Electric used by its Riverside-San Bernardino-Redlands through service, at a distance of not over 300 feet.

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By Decision No. 18857 on Application No. 13675, applicant has been permitted to abandon its tracks and service to Urbita Springs. The tracks on E street were torn up, the street paved with concrete to a width of fifty feet, forming a direct automobile route between the commercial center of San Bernardino and the Orange Show grounds, a distance of less than one mile. It is by this street that applicant proposes to establish bus service, the return route being west on Mill street and thence north on Arrowhead avenue to Third street and to applicant's depot.

Mr. Smith testified that all tickets sold at points outside of San Bernardino will be through to the show grounds, including transfers, and that all travel inside the city of San Bernardino will have universal transfer with the local bus and rail lines of applicant, thus making possible a through fare of six cents from any part of the city, including transfer. Mr. Smith testified that such operation of rail and bus service will prove profitable, based on past and anticipated attendance at the Orange Show. Mr. Smith admitted that when the Urbita Springs line over E street was taken up, it was the intention to use the Riverside-Redlands tracks in delivering passengers to the Orange Show, but that this method is found to be impracticable and disadvantageous for the following reasons:

That there is no passenger platform at Mill street, and that Mill street is not properly improved to care for pedestrians in bad weather;

That landing passengers at the track side at Mill street will be dangerous, as they must walk 400 to 500 feet to the show ground entrance through the automobile traffic of E street; and that Mill street, at the tracks, is not lighted at night;

That operation of trains would be seriously complicated by reason of a single track and an interlocking switch at the Southern Pacific crossing of the Santa Fe track, at which point the Pacific Electric uses the Southern Pacific single track.

Because of these reasons, Mr. Smith said it had been arranged with the officers and directors of the Orange Show to establish special bus service as a coordinated part of its entire service, which service will actually enter the show grounds and deposit passengers at the admission gates, and leave westwardly to return over streets not heavy in traffic. The service is also to enter the depot premises to receive and discharge passengers. He testified that applicant has fifteen or twenty 25-passenger vehicles available for this business.

Mr. Smith also admitted that special excursion party cars from points outside San Bernardino would be sent over the Redlands branch to Mill street, but that the number of such cars would be negligible.

Applicant was supported by the testimony of John Anderson, county supervisor and director of the Orange Show; Roy H. Mack,

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secretary of the San Bernardino Chamber of Commerce and manager of the Orange Show; W. J. Handford, city councilman; Grant Holcomb, former mayor of San Bernardino, director of the Chamber of Commerce and chairman of its transportation committee; Harry S. Webster, publisher of the *Sun* and the *Telegraph*, San Bernardino newspapers, and Ben L. Holmes, joint agent of the Union Pacific and Santa Fe lines at San Bernardino, and chairman of the transportation committee of the Orange Show. The substance of their testimony was that the public, for many years, has become habituated to through service on the Pacific Electric to the Orange Show and return, and that the continuity of the trip should be preserved; also that lack of continuity would decrease attendance and increase cost of transportation to the public. Mr. Webster explained that the 15,000 or more residents of San Bernardino who annually patronize the show could do so at a round trip expense of twelve cents, including transfer, while if the bus service is not established, it would cost twenty-two cents, including five-cent fares via Motor Transit service, which has no municipal service in San Bernardino, and can not receive or give transfers. He further emphasized the fact that Motor Transit operation on E street would be confusing and hazardous, in that cars would move in both directions on this street and further congest traffic at Third and E streets, the general transfer point. The proposed operation also received the unanimous approval of the city council and a permit has been granted by the board.

Motor Transit Company protested the application on the ground that Motor Transit will inaugurate and maintain bus service between its termini in San Bernardino and the show grounds, at a reduced rate of five cents one way (its regular fare is ten cents one way), with ample equipment of vehicles of twenty-five, or more, passenger capacity and schedules under ten minutes headway or more frequently. This operation is over protestant's authorized route between San Bernardino and Redlands. It proposes to follow Third street from its own depot, past the depot of applicant, with schedules connecting with trains, and thence via E street to the show grounds, returning over the same route. Vehicles would be turned just south of Mill street and outside the city limits of San Bernardino. This service has not been offered in previous years and, while applicant questioned the right to establish such service, no proof was offered.

The National Orange Show is San Bernardino's greatest annual civic event and the largest opporunity for display by the citrus organizations of southern California, according to R. H. Mack, its manager. He testified that it has been established eighteen years. Five years ago it was incorporated as a nonprofit corporation, issued $125,000

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bonds and built the present spacious exposition building on land owned by the corporation. All surplus has been used in retiring bonds and enlarging facilities. An annual cash subscription of $7,500 is made by San Bernardino citizens and, so far, this subscription has been refunded after the shows. The corporate property, should the fixed purposes be abandoned, is to become the property of the city and the Chamber of Commerce. The attendance aproximates 75,000 annually.

We have carefully considered the testimony herein, and find many reasons why the application should be granted as prayed for. To deny it would derange the plans of applicant and the Orange Show officers, to their probable injury, and would leave the public dependent on the service of protestant, which is untried for this purpose and not coordinated with other services and which also involves additional fares. In addition, the testimony shows that practically all of the traffic applicant proposes to transport on busses will originate on its own lines, both local and interurban, and that the bus service is conferred on the public without additional cost. Further, applicant has no other practicable or convenient or safe method of delivering its through passengers to destination in any large numbers. Protestant has not sought to coordinate its service with other carriers or the Orange Show management; in fact, the knowledge of its proposed reduced fares was not made known to the Chamber of Commerce when it adopted its resolution supporting applicant (Exhibit No. 1), on February 10th, according to the testimony of R. H. Mack. We, therefore, believe the application should be granted, and an order, accordingly, will be entered.

ORDER.

Pacific Electric Railway Company, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to establish automobile passenger stage service between San Bernardino and the fair grounds of the National Orange Show, a public hearing having been held, the matter having been duly submitted and now being ready for decision, the Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment of such service during the periods when such National Orange Show is open each year, over and along the following route:

Beginning at Pacific Electric station, San Bernardino, east on Third street to E street, thence south on E street to Mill and E streets; returning, east on Mill street to Arrowhead avenue (the south half of Mill street being in San Bernardino County and without the city of San Bernardino), thence north on Arrowhead avenue to Second street, thence west on Second street to Pacific Electric station, San Bernardino; and

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It is hereby ordered, that a certificate of public convenience and necessity therefor be and the same hereby is granted, subject to the following conditions:

(1) Applicant will file its acceptance of this certificate within ten days from date hereof, accepting said certificate as an extension of its present operative rights and not as a new or separate operation.

(2) Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

(3) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

(4) No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this fifteenth day of February, 1928.

DECISION No. 19362.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION FIXING FAIR AND REASONABLE RATES FOR GAS SUPPLIED TO ITS CONSUMERS.

Application No. 6108.

Decided February 15, 1928.

RATES—GAS—REDUCTION.—Pacific Gas and Electric Company ordered to decrease rates for gas service because of decrease in cost of fuel oil.

BY THE COMMISSION.

NINTH SUPPLEMENTAL ORDER.

Whereas, in Decision No. 9125 (20 C. R. C. 64) in the above entitled matter this Commission provided, with reference to the rates therein established, that such rates would be subject to increase or decrease by amounts as set forth therein, upon approval of the Railroad Commission, based upon a change in the price paid for oil in the various communities served; and

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Whereas, Schedule No. G-10, applying in Sacramento, is subject to increase or decrease by amounts as set forth therein, based upon a change in the price paid for oil, upon approval of the Railroad Commission; and

Whereas, Pacific Gas and Electric Company now makes affidavit that, by a contract executed January 26, 1928, but effective as of December 17, 1927, the price paid for oil was decreased by various amounts in different localities served; therefore,

It is hereby ordered, that Pacific Gas and Electric Company decrease the rates for gas service, as determined in Decision No. 15626, effective for all meter readings taken on and after February 27, 1928, so that the rates of the several schedules shall be less than the basic rates of the respective schedules set forth in Decision No. 9125 by the following amounts:

Schedule No. G-1—13 cents per 1000 cubic feet.
Schedule No. G-3—23 cents per 1000 cubic feet.
Schedule No. G-4—15 cents per 1000 cubic feet.
Schedule No. G-5—16 cents per 1000 cubic feet.
Schedule No. G-6—16 cents per 1000 cubic feet.
Schedule No. G-9—18 cents per 1000 cubic feet.

It is hereby further ordered, that Pacific Gas and Electric Company decrease the rates for gas service rendered under Schedule No. G-10, effective for all meter readings taken on or after February 27, 1928, so that the rates therein shall be one cent per 1000 cubic feet less than the rates heretofore set forth in Schedule No. G-10.

It is hereby further ordered, that Pacific Gas and Electric Company file with the Commission on or before February 27, 1928, revisions of its schedules as herein authorized.

Dated at San Francisco, California, this fifteenth day of February, 1928.

DECISION No. 19363.

IN THE MATTER OF THE INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE REASONABLENESS OF RATES OF THE WESTERN STATES GAS AND ELECTRIC COMPANY, FOR SERVICE OF GAS IN THE CITY OF STOCKTON.

Case No. 1664.

Decided February 15, 1928.

RATES—GAS—REDUCTION.—Western States Gas and Electric Company ordered to decrease rates for gas service because of decrease in cost of fuel oil.

BY THE COMMISSION.

THIRD SUPPLEMENTAL ORDER.

Whereas, in Decision No. 13332 (24 C. R. C. 677) in the above entitled matter, this Commission provided, with reference to Schedule

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"A" therein established, that such rates, with the exception of the first block, would be subject to increase or decrease, upon approval of the Railroad Commission, on the basis of one and one-half cents per thousand cubic feet for each ten cent increase or decrease in the price paid for oil above or below the price of $1.15 per barrel f.o.b. Stockton; and

Whereas, Western States Gas and Electric Company now makes affidavit that, by a contract executed January 26, 1928, but effective as of December 17, 1927, the price of oil was decreased by seven cents per barrel from $1.19 per barrel to $1.12 per barrel, f.o.b. Stockton, which is three cents per barrel less than the basic price upon which rates were established in Decision No. 13332; therefore,

It is hereby ordered, that Western States Gas and Electric Company decrease the rates for gas service, as determined in Decision No. 15630, effective for all meter readings taken on and after February 27, 1928, so that said rates shall be identical and equal to the basic rate established in Decision No. 13332.

It is hereby further ordered, that Western States Gas and Electric Company file with the Commission on or before February 27, 1928, a revision of its schedules as herein authorized.

Dated at San Francisco, California, this fifteenth day of February, 1928.

DECISION No. 19364.

IN THE MATTER OF THE APPLICATION OF A. B. PERKINS, JOSEPH D. O'BRIEN AND AGNES K. O'BRIEN, FOR AUTHORITY TO MORTGAGE NEWHALL WATER SYSTEM.

Application No. 14372.
Decided February 15, 1928.

SECURITY ISSUES—NOTE—MORTGAGE.—A. B. Perkins et al. (Newhall Water System) authorized to execute a mortgage and issue a note in an amount not to exceed $2,373.46.

BY THE COMMISSION.

OPINION.

In this application A. B. Perkins, Marguerite Perkins, Joseph D. O'Brien and Agnes K. O'Brien, as co-owners of a public utility water system known as the Newhall Water System, ask permission to execute a second mortgage on said water system to secure the payment of a $2,373.46 note, payable in monthly installments of $100, with interest on unpaid balances at the rate of 8 per cent per annum. They also ask permission to issue the note.

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The Newhall Water System supplies water for domestic purposes in and about the town of Newhall, Los Angeles County. The system furnishes water to about 220 consumers. For 1926 the operating revenues of the system amounted to $6,031.26. In a financial statement attached to the application the investment in the plant and properties, as of December 1, 1927, is reported at $60,162.42, and the liabilities and other credit balances, as of the same date, as follows:

Notes payable	$20,500 00	
Accounts payable	2,373 46	
Other accounts	1,013 34	
Subtotal		$23,886 80
Reserve for depreciation		3,280 65
Consumers advances for construction		8,913 13
Net worth		24,081 84
Total		$60,162 42

Applicants report that they had to borrow the $2,373.46 during 1927 to obtain an additional water supply. It appears that H. Clay Needham furnished them the money with the understanding that they would ask permission to issue to him a note for the sum of $2,373.46 secured by a second mortgage. The $2,373.46 was used for the following purposes:

For new pump	$978 72
For rental of air compressor for testing production of Happy Valley well prior to installing pump	116 50
For boring out cylinder stuck in casing, clearing out sand and reboring well, etc.	573 76
For labor in pulling pump, setting and rebuilding replacement pump, parts, piping, freight, etc.	512 93
For new meters and pipe	150 00
For interest	41 55
Total	$2,373 46

The copy of the proposed mortgage securing the payment of the amount was filed in this matter on February 1, 1928, and appears to be in satisfactory form.

ORDER.

Application having been made to the Railroad Commission for authority to execute a mortgage and to issue a note, and the Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted as herein provided;

It is hereby ordered, that A. B. Perkins, Marguerite Perkins, Joseph D. O'Brien be and they hereby are authorized to execute a mortgage substantially in the same form as that filed with the Commission on February 1, 1928, and to issue a promissory note, to be secured thereby, in the principal amount of not exceeding $2,373.46 payable in monthly installments of $100, with interest on unpaid balances at the rate of

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not exceeding 8 per cent per annum, for the purpose of refunding the advances of $2,373.46 referred to herein.

The authority herein granted is subject to the following conditions:

1. The authority herein granted to execute a mortgage is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

2. Applicants shall not, hereafter, urge the Railroad Commission or other public body or court to consider the note herein authorized to be issued, or the rate of interest thereon, in determining the value of the properties or the rate base and rate of return in fixing rates of the water utility.

3. Applicants shall keep such record of the issue of the note herein authorized and of the disposition of the proceeds as will enable them to file, within thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted shall become effective when applicants have paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

Dated at San Francisco, California, this fifteenth day of February, 1928.

DECISION NO. 19369.

IN THE MATTER OF THE APPLICATION OF THE HIGHLAND DOMESTIC WATER COMPANY, A CORPORATION, FOR AUTHORITY TO INCREASE ITS WATER RATES.

Application No. 14070.

Decided February 15, 1928.

RATES—WATER UTILITY.—Application of Highland Domestic Water Company, supplying water in the vicinity of Highland, San Bernardino County, to increase rates denied.

RETURN—ALLOWANCE FOR AMORTIZATION—ABNORMAL EXPENSE.—Abnormal charges for legal expenses and repairs to buildings, which may have reasonably been expected not to recur annually, should be amortized over a period of years.

RETURN—REASONABLENESS—OVERBUILDING.—When present distribution facilities are considerably in excess of those necessary to supply existing demands, it would be unfair to place upon present consumers the full burden of paying for an unreasonable proportion of facilities awaiting possible future demands, and a rate increase will not be granted such a utility when earning a return slightly in excess of 6 per cent.

William Guthrie, for Applicant.
W. E. Byrne, for O. Hopp.

CARR, *Commissioner*.

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OPINION.

The Highland Domestic Water Company, a corporation, applicant in the above entitled proceeding, is a public utility engaged in the business of supplying water for domestic and irrigation use in and in the vicinity of Highland, San Bernardino County. The application alleges in effect that the rates now charged by applicant are unjust and unreasonable and do not afford a reasonable return on the amount of money invested in its property, and asks that the Railroad Commission authorize applicant to make such changes in its rates as will afford a fair return on its investment.

A public hearing was held in the above proceeding at Highland, after all interested parties had been notified and given an opportunity to appear and be heard.

The company's water supply is obtained from three wells by electrically-driven pumps discharging into a reservoir having a capacity of approximately 380,000 gallons. The water is then distributed by gravity through approximately 72,900 feet of mains, ranging from eight inches to three-quarter inch in diameter, to approximately 394 consumers, of which 369 are metered. One hundred and fifty-four consumers pay an additional rate of 25 cents per month for fire protection service, as provided by an agreement between the County Fire Protection District and the company, in effect since November 20, 1905.

The rates now charged for water service were established by this Commission on August 26, 1925, by its Decision No. 15338, and are as follows:

METER RATES.

Monthly meter quantity rates:

From 0 to 500 cubic feet, per 100 cubic feet	$0 30
From 500 to 2000 cubic feet, per 100 cubic feet	20
From 2000 to 3500 cubic feet, per 100 cubic feet	15
All in excess of 3500 cubic feet, per 100 cubic feet	10

Monthly minimum meter charges:

⅝ or ¾-inch meter	$1 50
1 -inch meter	2 25
1½-inch meter	3 00
2 -inch meter	5 00

Each of the foregoing "Monthly minimum charges" will entitle the consumer to the quantity of water which that minimum will purchase at the "Monthly minimum meter charges" set out above.

The monthly flat rates are in part as follows:

For each residence of not over five rooms	$1 50
For each additional room over five	10
For each head of stock kept by private family	25
For each automobile	25
For each bathtub in private house	25
For each water closet in private house	35
For small stores and business offices	2 00
For large stores and business offices employing four or more persons	2 50
Lawns of fifty square yards, or less	25
Each additional square yard	005

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MONTHLY RATE FOR FIRE PROTECTION SERVICE.

For each house or building connection within the fire protection district in addition to above charges per month $0 25

William Guthrie, president of the company, submitted a statement setting out the rate base established by the Commission in its Decision No. 15338, dated August 26, 1925, with additions and betterments installed each year since that date, and also the operating expenses, depreciation allowance and revenues for the years 1925, 1926 and the first seven months of 1927. This information is tabulated and expanded as follows to show the results of operation for each year:

	1925	*1926*	*1927 (First 7 mos.)*
Rate base, January 1st	$53,015 00	$64,773 33	$70,678 23
Additions to capital	11,758 33	5,904 90	1,128 98
Rate base, December 31st	$64,773 33	$70,678 23	$71,807 21
Average rate base for year	$58,894 17	$67,725 78	$71,242 72
Operating revenue	$9,305 98	$9,386 93	$5,575 23
Operating expenses including depreciation	5,439 80	5,450 73	3,747 37
Net operating revenue	$3,866 18	$3,936 20	$1,827 86
Per cent return on average rate base	6.56%	5.80%	

Investigation by one of the Commission's hydraulic engineers shows that the fixed capital installed as of December 31, 1927, as set out by applicant, is reasonable with the possible exception of the cost of drilling the new well which was abnormally high by reason of encountering unusual difficulties in drilling operations. The increase in 1927 expenses is due to a recent increase in the salary of the manager, to charges for automobile use not heretofore entered in the accounts and to certain abnormal charges for legal expenses and repairs to buildings, which may reasonably be expected not to recur annually and should, therefore, be amortized over a period of years. From a careful consideration of the operating expenses, it is believed that the sum of $5,700 is a reasonable allowance for this item, including a reasonable allowance for depreciation.

The operating revenues for the period October 1, 1926, to October 1, 1927, were $10,301. Based upon the figures outlined above, the operations for this period resulted in a net return of approximately 6.5 per cent on the average investment of $71,243, or 6.4 per cent on the investment as of December 31, 1927, amounting to $71,807.

While there were no complaints made against the service rendered by this utility, a number of consumers appeared at the hearing and protested against the granting of any increased rate whatsoever and requested that more water be allowed for the present minimum monthly charge in order that gardens and lawns could be properly maintained at a reasonable cost. Applicant, however, requests a higher minimum

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charge which will provide for a proportionately larger quantity of water but also asks that the other quantity rates in the rate schedule now in effect remain unchanged.

The evidence indicates that this system serves an area largely residential in character and not in any sense of the word thickly settled. Part of the service is rendered to consumers residing in small tracts of land devoted principally to citrus culture and, recently, a considerable amount of money has been invested to supply new territory very sparsely settled at the present time. Under these circumstances, it is clear that the present distribution facilities are considerably in excess of those necessary to supply existing demands and that the system is therefore coniderably overbuilt. It would, of course, be unfair to the present consumers to place upon them the full burden of paying for an unreasonable proportion of facilities installed and awaiting possible future demands. A comparison of the rates now charged by this utility with the rates in effect on similar systems operating under like conditions indicates that applicant's rates, with proper operating economies, should enable it to operate at a reasonable profit. In addition to this, the evidence shows a steady and substantial annual increase in gross revenues from the normal growth of the community served. In view of these circumstances and the further fact that this utility is now enjoying a net return somewhat in excess of 6 per cent upon its total capital investment, it is clear that the evidence does not warrant the granting of a further increase in rates under existing conditions.

The following form of order is recommended:

ORDER.

Application having been made to this Commission as entitled above, a public hearing having been held thereon, the matter having been submitted, and the Commission being now fully advised in the premises;

It is hereby ordered, that the above entitled matter be and it is hereby denied.

The effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this fifteenth day of February, 1928.

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DECISION NO. 19371.

IN THE MATTER OF THE APPLICATION OF CITIZENS WATER COMPANY OF NILES FOR LEAVE TO BORROW SIXTEEN THOUSAND DOLLARS TO BE SECURED BY A MORTGAGE.

Application No. 14383.

Decided February 16, 1928.

SECURITY ISSUES—NOTE—MORTGAGE.—Citizens Water Company of Niles authorized to execute a mortgage and issue a note for $16,000.

Oliver Ellsworth, for Applicant.

BY THE COMMISSION.

OPINION.

In this application Citizens Water Company of Niles asks permission to execute a mortgage and to issue its two-year 6 per cent note for $16,000 for the purpose of paying outstanding indebtedness and financing the cost of additional property.

Citizens Water Company of Niles has filed with the Commission its annual report for the year 1927 and in it reports its assets and liabilities as of December 31, 1927, as follows:

Assets.

Fixed capital	$61,531 30
Cash	1,989 88
Accounts receivable	694 49
Materials and supplies	415 79
Unamortized discount on stock	8,255 00
Total assets	$72,886 46

Liabilities.

Capital stock	$26,510 00
Notes payable	6,500 00
Accounts payable	228 00
Reserve for depreciation	17,923 12
Corporate surplus	21,725 34
Total liabilities	$72,886 46

By Decision No. 15023, dated June 6, 1926, the Commission authorized applicant to execute a mortgage to secure the payment of a promissory note in the principal amount of $8,000. This note was issued, but $1,500 has been paid on account thereof leaving outstanding at present $6,500 as shown in the foregoing balance sheet. The company proposes to use $6,500 of the proceeds received through the issue of the $16,000 note to pay the balance due on this promissory note and to use the remaining $9,500 to pay for the purchase of additional land and the construction or acquisition of additional facilities as follows:

Land	$500 00
100,000-gallon redwood tank, completely installed	2,500 00
3000 feet of 6-inch cast iron pipe and 3000 feet of 4-inch cast iron pipe with fittings and connections	5,600 00
Booster pump, water and fire proof building	900 00
Total	$9,500 00

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It is reported that the purchase of the land and the construction or acquisition of the additional facilities is necessary to enable it to maintain adequate water pressure and to render better service to applicant's customers in and about the town of Decoto. By the installation of the redwood tank, it will be possible to store enough water to supply said customers during the time the water main from Niles to Decoto may be shut down for repair.

ORDER.

Citizens Water Company of Niles having applied to the Railroad Commission for permission to execute a mortgage and to issue a two-year note for $16,000, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of the note is reasonably required by the applicant for the purposes specified herein, which purposes are not in whole or in part reasonably chargeable to operating expense or to income; therefore,

It is hereby ordered, that Citizens Water Company of Niles be and it hereby is authorized to execute a mortgage substantially in the same form as that attached to the application herein and marked Exhibit "B" and to issue its promissory note in the principal amount of $16,000 payable on or before two years after date of issue with interest at not exceeding 6 per cent per annum for the purpose of paying the outstanding note of $6,500 and of financing the cost of the additional land and facilities to which reference is made in the foregoing opinion.

The authority herein granted is subject to the following conditions:

1. Within sixty days after the issue of note herein authorized, applicant shall file with the Commission a verified report as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

2. The authority herein granted to execute a mortgage is for the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

3. The authority herein granted will become effective when applicant has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

Dated at San Francisco, California, this sixteenth day of February, 1928.

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DECISION NO. 19372.

IN THE MATTER OF THE APPLICATION OF TUOLUMNE COUNTY ELECTRIC POWER AND LIGHT COMPANY, A CORPORATION, AND PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING THE FORMER TO SELL AND CONVEY AND THE LATTER TO PURCHASE AND ACQUIRE THE PROPERTIES REFERRED TO IN THIS APPLICATION.

Application No. 14278.
Decided February 16, 1928.

TRANSFER—ELECTRIC UTILITY.—Tuolumne County E. P. & L. Co. authorized to sell its properties to Pacific Gas and Electric Company.

SECURITY ISSUES—AMOUNT—CONSOLIDATION.—When utilities pay more for public utility properties than the actual or estimated historical cost, including land at present value, the difference between such cost and the purchase price shall be charged to surplus and not capitalized through the issue of securities (12 C. R. C. 485, 16 C. R. C. 799, 21 C. R. C. 858, 28 C. R. C. 361, 28 C. R. C. 585, 28 C. R. C. 625, 30 C. R. C. 346).

CONSOLIDATION, MERGER AND SALE—CONDITIONS UPON WHICH AUTHORIZATION GRANTED.—In authorizing the transfer of utility properties, the vendee utility was required to file with the Commission a certified copy of the deed or other instrument of conveyance, together with a copy of each and every bookkeeping entry entered on its books to record the transaction.

F. D. Madison, for Tuolumne County Electric Power and Light Company.
C. P. Cutten, for Pacific Gas and Electric Company.

BY THE COMMISSION.

OPINION.

In this application the Railroad Commission is asked to make an order authorizing Tuolumne County Electric Power and Light Company to sell, for $160,500, to Pacific Gas and Electric Company, its public utility properties and business, under and in accordance with the provisions of an agreement of sale, dated December 9, 1927, and, upon the sale and conveyance of such properties and business to Pacific Gas and Electric Company, to cease furnishing and supplying electric energy in the territory in which it now operates..

The application shows that Tuolumne County Electric Power and Light Company is a public utility engaged in the business of distributing and selling electric energy for light, heat and power purposes in the city of Sonora and the towns of Columbia, Jamestown, Stent and Quartz and in adjacent and intervening territory, all in Tuolumne County. The company purchases the energy it distributes from the lines of the Pacific Gas and Electric Company at Sonora and distributes it to about 1150 consumers. It reports its operating revenues during 1927 at $58,496.82, its operating expenses, including depreciation, at $44,047.98 and its net operating revenues at $14,448.84.

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It appears that those in control of the affairs of Tuolumne County Electric Power and Light Company desire to withdraw from the public utility business and to that end have made arrangements, under the agreement dated December 9, 1927, to dispose of the utility properties to Pacific Gas and Electric Company for $160,500, payable in cash, transfer to be made free and clear of all liens and encumbrances.

The properties to be transferred, according to the agreement, include "the vendor's electric transmission and distribution system in the city of Sonora and in unincorporated territory in the county of Tuolumne, and all substations, transformers, meters, electrical appliances, apparatus and equipment, electrical materials and supplies on hand (except those which are hereinbefore expressly excepted from the operations of this agreement), automobiles, trucks and other conveyances, all tools, machinery and mechanical devices, its business of selling and distributing electricity and the good will of such business, all franchises for the construction, maintenance and operation of its electric lines and systems, all rights of way, easements, leases and contracts for the purchase and sale of electric energy."

An inventory and appraisal of the properties involved in this proceeding was made by the Commission's engineering department in connection with Case No. 2289, and the historical cost, as of December 31, 1926, estimated at $96,190. Applicants now report in Exhibit 3, filed in this proceeding, net additions during 1927 of $5,055.29 which, added to the $96,190, brings the total up to $101,245.29. In addition, an inventory and appraisal was made by J. T. Ryan, valuation engineer of Pacific Gas and Electric Company, who estimates, as shown in Exhibit 5, the reproduction cost new, as of December 6, 1927, at $113,041. No deductions were made by J. T. Ryan from either the estimate of original cost or his estimate of reproduction cost new on account of depreciation.

It will be observed that the purchase price of $160,500 is considerably in excess of any of the valuation figures submitted. A. F. Hockenbeamer, president of Pacific Gas and Electric Company, testified that such purchase price was determined by negotiations between representatives of the two companies. Though in his opinion the purchasing company may earn a fair return on the purchase price, we do not believe that it is in the public interest to permit the Pacific Gas and Electric Company to charge all of the $160,500 to fixed capital accounts. In this connection we might call attention to the fact that the Commission has repeatedly held that where utilities were paying more for public utility properties than the actual or estimated historical cost of said properties, including land at present value, the difference between such cost and the purchase price should

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be charged to surplus and not capitalized through the issue of securities. Reference is here made to some of the Commission's decisions relating to this matter. (See 12 C. R. C. 485, 16 C. R. C. 799, 21 C. R. C. 858, 28 C. R. C. 585, 28 C. R. C. 625, 28 C. R. C. 361, and Decision No. 18775, September 10, 1927.)

If the Pacific Gas and Electric Company acquires the properties it may not charge to fixed capital accounts more than $101,245.29 plus the cost to the Tuolumne County Electric Power and Light Company of additions and betterments from December 31, 1927, to the date of the transfer of the properties. It may charge to account 117—materials and supplies, the cost to the Tuolumne County Electric Power and Light Company of the materials and supplies transferred. The balance of the price paid for the properties by the Pacific Gas and Electric Company must be charged to account 508, miscellaneous debits to profit and loss.

It is urged, in support of the application, that the two systems are already interconnected so that the properties of Tuolumne County Electric Power and Light Company can be operated by Pacific Gas and Electric Company with but few additions to its present organization and that the latter company, because of its more complete organization and greater financial resources, can operate such properties more efficiently and economically and improve the service and develop additional business.

ORDER.

Application having been made to the Railroad Commission by the Tuolumne County Electric Power and Light Company to sell certain of its properties to Pacific Gas and Electric Company, which company asks permission to purchase and acquire said properties, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the transfer of the properties is in the public interest, provided such transfer is made in accordance with the terms and provisions of this order;

It is hereby ordered, that Tuolumne County Electric Power and Light Company be and it hereby is authorized to sell and convey on or before June 30, 1928, to the Pacific Gas and Electric Company, and Pacific Gas and Electric Company be and it hereby is authorized to purchase and acquire all of the properties which the former has agreed to sell to the latter in the agreement of sale dated December 9, 1927, a copy of which is on file in this proceeding.

It is hereby further ordered, that Pacific Gas and Electric Company shall charge to fixed capital account, as that term is defined in the uniform system of accounts for electrical corporations prescribed by this Commission and effective on January 1, 1923, not more than $101,245.29 plus the cost of additions and betterments from

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December 31, 1927, to the date of the transfer of the properties; that it shall charge to account 117—materials and supplies, the cost to the Tuolumne County Electric Power and Light Company of the materials and supplies transferred, and shall charge the difference between the amount paid to the Tuolumne County Electric Power and Light Company and said $101,245.29, said cost of additions and betterments and said cost of said materials and supplies, to account 508, miscellaneous debits to profit and loss.

It is hereby further ordered, that Tuolumne County Electric Power and Light Company be and it hereby is authorized upon the sale and conveyance to Pacific Gas and Electric Company of the properties herein authorized to be sold and transferred, to cease furnishing and supplying electric energy in the territory in which it now furnishes electric energy by means of such properties.

It is hereby further ordered, that Pacific Gas and Electric Company within thirty days after acquiring ownership and possession of the properties herein authorized to be transferred, shall file with the Commission a certified copy of the deed or other instrument of conveyance, and also a copy of each and every bookkeeping entry entered on its books to record the aforesaid transaction.

It is hereby further ordered, that Tuolumne County Electric Power and Light Company shall file with the Commission a report, on the regular annual report forms prescribed by this Commission, covering the period from January 1, 1928, down to the date upon which it ceases its public utility operations, said report to be filed within thirty days after the transfer of the aforesaid properties.

It is hereby further ordered, that the authority herein granted shall become effective twenty days from the date hereof.

Dated at San Francisco, California, this sixteenth day of February, 1928.

Decision No. 19373.

IN THE MATTER OF THE APPLICATION OF MADERA CANAL AND IRRIGATION COMPANY, A CORPORATION, AND SAN JOAQUIN RIVER WATER STORAGE DISTRICT, A PUBLIC CORPORATION, FOR AN ORDER AUTHORIZING THE TRANSFER AND SALE OF PROPERTY.

Application No. 14050.

Decided February 16, 1928.

Transfer—Irrigation Utility.—Madera Canal and Irrigation Company authorized to transfer its irrigation system in the vicinity of Madera to San Joaquin River Water Storage District.

Consolidation, Merger and Sale—Jurisdiction—Water Right Contracts.—The interpretation of the rights of holders of so-called water right contracts with a public utility is not a matter germane to a proceeding seeking authorization to transfer the utility property to a water storage district, but involves

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a question of policy on the part of the directors of a district relating solely to its future operations and entirely beyond the jurisdiction of the Commission.

W. H. Davis, by *Oliver P. Schoonmaker*, for Madera Canal and Irrigation Company.
Milton T. Farmer, for San Joaquin River Water Storage District.

LOUTTIT, *Commissioner*.

OPINION.

Madera Canal and Irrigation Company, a corporation, engaged in the business of distributing and selling water for irrigation purposes to its consumers in Madera County, asks the Railroad Commission for authority to transfer its property to the San Joaquin River Water Storage District, a public corporation, which joins in the application.

A public hearing in this proceeding was held at Madera after all interested parties had been duly notified and given an opportunity to appear and be heard.

Madera Canal and Irrigation Company furnishes water for irrigation purposes to about 16,000 acres of land in the general vicinity of Madera. The water supply is obtained by diversion from Big Creek, a tributary of the South Fork of the Merced River, and from Soquel and Chilcoot creeks, both being tributary to the North Fork of the San Joaquin River, from which sources the waters are conveyed to the Fresno River which is used as a natural channel from which the company has the adjudicated right to divert the first 200 second-feet, or less, of water flowing therein. The physical system consists of a diversion dam and about 100 miles of transmission and distribution canals. In 1916, the engineers of this Commission estimated the reproduction cost new of the properties, exclusive of rights of way, water rights and other intangible values, to be $108,643 (Decision No. 4478, 13 C. R. C. 528). The consideration which the district proposes to pay for the entire properties of this utility, including water rights, is $175,000.

The district was formed and duly organized in 1924 under the provisions of the California Water Storage District Act and proposes to acquire and consolidate several other irrigating systems now within its boundaries, including the Madera Irrigation District. Owing to general depletion of stream flow early each summer throughout this area, storage is very urgently needed to insure a continuous and dependable service throughout the irrigation season. Individually, the various irrigating systems are financially unable to develop the necessary storage facilities; however, under the storage district plan, adequate storage can be developed to provide for hydro-electric power generation and a dependable water supply for the entire 550,000 acres embraced within the district's boundaries, which include all of the area irrigated by the company's canals.

Certain of the water users under this utility system, representing

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about 7100 acres, all of which are situated within the boundaries of the district, hold so-called water right contracts with the company, providing, among other things, for the delivery of water by the canal company to the contract holders in the amount of one second-foot of water for each 160 acres of land at the rate of $1 per acre. Although the status of these contracts was brought up during the hearing in this proceeding and the Commission was requested to indicate the rights of the holders of said contracts to receive water in the future from the district under the terms thereof, we feel that this is not a matter germane to this proceeding but is more properly a question of policy on the part of the directors of the district relating solely to its future operations and entirely beyond the jurisdiction of this Commission.

There was no objection at the hearing to the proposed transfer of the canal company's property to the storage district and, it appearing that upon final completion of this transfer all of the lands now served, or entitled to be served, by this utility will be included within the boundaries of said district and will receive a better and more adequate water service therefrom, it is clear that public interest will best be served by granting this application.

The following order is recommended:

ORDER.

Madera Canal and Irrigation Company, a corporation, having applied to the Railroad Commission for authority to transfer its properties, rights and interests to San Joaquin River Water Storage District, a public corporation, which joins in the application, a public hearing having been held thereon, the matter having been submitted and the Commission being fully advised in the premises;

It is hereby ordered, that Madera Canal and Irrigation Company, a corporation, be and it is hereby authorized to transfer to San Joaquin River Water Storage District, a public corporation, its physical properties and water rights, as more particularly described in, and subject to substantially the same terms and conditions as set forth in, Exhibits 1, A and B, attached to the application herein and made a part hereof by reference, subject, however, to the following terms and conditions:

1. The authority herein granted shall apply only to such transfer as may have been made on or before December 31, 1928, and a certified copy of the final instrument of conveyance shall be filed with the Commission by Madera Canal and Irrigation Company, a corporation, within thirty days from the date on which it is executed.

2. Within thirty days from the date that Madera Canal and Irrigation Company, a corporation, actually relinquishes control and possession of the property herein authorized to be sold, it shall file with this

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Commission a certified statement indicating the date upon which such control and possession were relinquished.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this sixteenth day of February, 1928.

DECISION No. 19375.

IN THE MATTER OF THE APPLICATION OF HUNT, HATCH AND COMPANY FOR PERMISSION TO TRANSFER ITS OPERATIVE PROPERTIES AND FRANCHISE RIGHTS TO HUNT-HATCH TRANSPORTATION COMPANY.

Application No. 14336.

IN THE MATTER OF THE APPLICATION OF HUNT-HATCH TRANSPORTATION COMPANY FOR AN ORDER PERMITTING IT TO ISSUE TWO HUNDRED FIFTY THOUSAND DOLLARS PAR VALUE OF ITS COMMON STOCK IN EXCHANGE FOR ALL THE OPERATIVE ASSETS OF HUNT, HATCH AND COMPANY.

Application No. 14337.

Decided February 16, 1928.

TRANSFER—VESSELS—SECURITY ISSUES.—Hunt, Hatch & Co. authorized to transfer its public utility properties to Hunt-Hatch Transportation Company, and the latter authorized to issue in payment therefor not exceeding $103,000 of common stock.

Athearn, Chandler and Farmer, by *Fred G. Athearn*, for Applicants..

BY THE COMMISSION.

OPINION.

In Application No. 14336 Hunt, Hatch & Company asks permission to sell and transfer to the Hunt-Hatch Transportation Company all of its properties used in transportation business, such properties consisting of the right to operate boats, together with boats, dock and terminal equipment and office furniture, to which reference will be made hereafter.

In Application No. 14337, as amended at the hearing had before Examiner Fankhauser on January 27th, the Hunt-Hatch Transportation Company asks permission to issue such an amount of common stock as may be equal to the cost of the properties, less depreciation, which Hunt, Hatch & Company propose to transfer to Hunt-Hatch Transportation Company.

It is of record that Hunt, Hatch & Company now is, and for more than twenty-five years last past, has been engaged in the general business of merchandising and the raising of farm products of every

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kind. In connection with such business the company has conducted as a public utility a transportation business.

The company's "Local Freight Tariff No. 7" now on file with the Commission names class and commodity rates between Oakland, California, and landings on the Sacramento River, San Joaquin River, Mokelumne River, Old River and Middle River, and special commodity rates from such river landings to Oakland, San Francisco and intermediate points. Supplement No. 1 to "Local Freight Tariff No. 7" makes the rates to and from Oakland applicable to and from Encinal Terminals, Alameda, California.

For the purpose of conducting such transportation business the company has acquired four boats; namely, the *Suisun City*, having a gross tonnage of 142 and a net tonnage of 73; the *Oakland*, having a gross tonnage of 225.28 and a net tonnage of 113; the *Surprise*, having a gross tonnage of 129.71 and a net tonnage of 64; and the *Lark*, having a gross tonnage of 72,28 and a net tonnage of 37. Mr. George W. Hatch, president of Hunt, Hatch & Company, testified that at times it has been necessary for the company to rent boats to transport all of the commodities offered.

The cost less depreciation of the assets to be transferred is reported as follows:

Equipment—boats		$92,576 69
Cost	$136,246 64	
Less depreciation	43,669 95	
Furniture and fixtures		2,084 21
Cost	$3,310 42	
Less depreciation	1,226 21	
Improvements on leased property		935 30
Cost	$2,618 51	
Less depreciation	1,683 21	
Merchandise		110 63
Fuel oil		29 58
Stationery and office supplies		500 00
Cash		5,362 31
Accounts receivable		5,179 85
Deferred expense—insurance		816 27
Total		$107,594 84
Less liabilities assumed		4,699 09
Net worth		$102,895 75

For the purpose of segregating the utility and nonutility business of Hunt, Hatch & Company, such company has caused to be organized the Hunt-Hatch Transportation Company. This company was organized under and by virtue of the laws of the State of California with an authorized capital stock of $500,000, divided into 5000 shares of the par value of $100 each. Of the authorized stock, $400,000 is represented by common and $100,000 by 7 per cent cumulative preferred. The preferred stock is at the option of the company redeemable at $102 per share cumulative dividends at any time after three years

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from its issue. In case of liquidation and dissolution of the company the preferred stockholders are entitled to receive only par and accumulated and unpaid dividends.

We believe that the Hunt-Hatch Transportation Company should be permitted to issue not exceeding $103,000 of common stock to acquire the assets referred to above.

The testimony shows that such stock as Hunt-Hatch Transportation Company may issue will be issued to Hunt, Hatch & Company and that Hunt, Hatch & Company will continue to own the stock and that there will be no change in the manner in which the public utility properties involved in this application will be operated.

No one appeared at the hearing to protest the granting of this application.

ORDER.

Hunt, Hatch & Company having asked permission to sell its public utility properties to the Hunt-Hatch Transportation Company, and said Hunt-Hatch Transportation Company having asked permission to issue stock in payment for said properties, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that Hunt, Hatch & Company should be permitted to sell and transfer said properties to the Hunt-Hatch Transportation Company; that said Hunt-Hatch Transportation Company should be permitted to issue in payment for such properties not exceeding $103,000 of common stock, subject to the provisions and conditions of this order; that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant, Hunt-Hatch Transportation Company; that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted as herein provided; therefore,

It is hereby ordered, as follows:

1. Hunt, Hatch & Company may transfer its public utility properties described in Application No. 14336 and in Application No. 14337 and in the foregoing opinion to the Hunt-Hatch Transportation Company.

2. Hunt-Hatch Transportation Company may issue in payment for the aforesaid properties not exceeding $103,000 of common stock, in payment for said properties.

3. Hunt, Hatch & Company, or its duly authorized representative, shall unite immediately with Hunt-Hatch Transportation Company, or its duly authorized representative, in common supplement to the tariffs on file with the Commission, Hunt, Hatch & Company on the one hand withdrawing, and Hunt-Hatch Transportation Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.

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4. The rights and privileges, the transfer of which is herein authorized, shall not hereafter be transferred, assigned, leased or sold or operations thereunder discontinued, unless the written consent of the Railroad Commission has first been secured.

5. Hunt-Hatch Transportation Company shall, within thirty days after the transfer of the properties herein authorized, file with the Railroad Commission a copy of the bill of sale or other instrument under which it acquires title to the aforesaid properties.

6. Hunt-Hatch Transportation Company shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

7. Except as otherwise stated herein, the authority granted by this order shall become effective within ten days after the date hereof.

Dated at San Francisco, California, this sixteenth day of February, 1928.

DECISION NO. 19376.

IN THE MATTER OF THE APPLICATION OF THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY, INCORPORATED, A CORPORATION, AND SAN JOAQUIN RIVER WATER STORAGE DISTRICT, A WATER STORAGE DISTRICT ORGANIZED PURSUANT TO THE WATER STORAGE DISTRICT ACT OF THE STATE OF CALIFORNIA, FOR AN ORDER AUTHORIZING THE TRANSFER AND SALE OF THE PROPERTY.

Application No. 13778.

Decided February 17, 1928.

TRANSFER—IRRIGATION UTILITY.—San Joaquin and Kings River Canal and Irrigation company authorized to transfer its properties, rights and interests for the sum of $4,400,100 to the San Joaquin River Water Storage District.

CONSOLIDATION, MERGER AND SALE—JURISDICTION OF COMMISSION—TRANSFER TO GOVERNMENTAL AGENCY.—Under the provisions of the "Water Storage District Act" the duty is imposed upon the proper officials of the district to determine what properties are necessary for the storage district, the amount to be paid therefor, and the manner in which the district shall be operated. The district having made this determination, it but remains for the Commission to determine whether or not the utility should be permitted to sell its properties and discontinue service.

CONSOLIDATION, MERGER AND SALE—CONDITIONS UPON WHICH AUTHORIZED.—The policy of the Commission has been, in applications to transfer public utility properties to governmental agencies, to see either that all consumers which have theretofore been served by the utility are either included within the boundaries of the governmental agency or district, or if not so included, that thereafter service be compelled by the district and protected to the consumer whose lands are excluded from the boundaries of the district. (*Southern Calif. Mountain Water Co.*, 1 C. R. C. 520.)

CONSOLIDATION, MERGER AND SALE—JURISDICTION OF COMMISSION—TRANSFER TO GOVERNMENTAL AGENCY.—As to requests of a water storage district that the

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Commission make certain determinations concerning the future operations of the irrigation project in a proceeding authorizing the transfer of utility properties to the district, these are matters of policy to be determined by the properly elected and qualified officers of the district and entirely beyond the jurisdiction of the Commission.

CONSOLIDATION, MERGER AND SALE—JURISDICTION OF COMMISSION—TRANSFER TO GOVERNMENTAL AGENCY.—In authorizing the transfer of public utility property to a water storage district, the Commission does not thereby endorse, approve or find upon the reasonableness of the value claimed or of the price agreed to be paid. As to whether or not the project is feasible is a matter under the "Water Storage District Act," delegated to the board of directors of the district and to other public bodies, and finally to the landowners within the district.

CONSOLIDATION, MERGER AND SALE—JURISDICTION OF COMMISSION—TRANSFER TO GOVERNMENTAL AGENCY.—Authorization to transfer utility properties to a water storage district should not be considered as an approval of any proposed contract by the district with other bodies defining water rights and conflicting claims thereto, but solely as an authorization to the public utility company to dispose of its properties.

J. E. Wooley, for San Joaquin and Kings River Canal and Irrigation Company, Incorporated.
Milton T. Farmer, for San Joaquin River Water Storage District.
Stephen W. Downey, for Consumers of Canal Company.
Fred B. Wood, for James J. Stevinson, a Corporation.

LOUTTIT, *Commissioner*.

OPINION.

This is a proceeding in which the San Joaquin and Kings River Canal and Irrigation Company, a corporation, engaged in the public utility business of distributing and selling water for irrigation and for domestic purposes in Fresno, Merced and Stanislaus counties, asks for authority to transfer its entire properties, including water rights (which properties are more particularly described in Exhibits "A" and "B" and the location of which are shown on map marked Exhibit "C" and attached to the petition on file herein), to San Joaquin River Water Storage District, a public corporation, which joins in the application.

The application, so far as it relates to transfer of the public utility properties, alleges in effect that all of the lands now served by the canal company are included in within the boundaries of the district, except approximately 58,280 acres; that the district has completed plans now ready for submission to the state engineer, providing for the comprehensive development of water for storage, generation of power, irrigation, and for the installation of a drainage system within the district, a part of which project embraces the purchase and use of the water rights, canals and other appurtenant structures of this canal company; that the company has a prior right, subject to certain intervening rights, to divert 1360 second-feet of water from the San Joaquin River, which has heretofore by the company been devoted in part to public use, that portion of the water right devoted to public use being termed and designated as the "crop land" water right and that part, secondary thereto in priority, devoted to the pri-

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vate use of Miller & Lux, Incorporated, designated and termed the "grass land" water right; that the original cost of the company's physical properties and water rights is $1,550,613.46; that the present value of the physical properties is $2,500,100, and of the water right designated as "crop land" water right, belonging to the company, $1,900,000, making a total of $4,400,100; that the present value of the "grass land" water right is the sum of $1,767,300, which sum the storage district proposes to pay directly to Miller & Lux, Incorporated, for the acquisition by the storage district of the "grass land" water right.

Formal protest against the approval of the transfer was made by many of the consumers served by the canal company upon the following grounds: That the acquisition of this system is neither necessary nor essential to the future functioning of the storage district; that the consumers will be forced to pay more for water under the present proposed district plan than a reasonable rate under public utility operation; that the prices, which the district has agreed to pay for these properties, particularly for the water rights, are so exorbitant that, when the entire costs thereof are assessed against the present consumers' land according to the benefits, as required under the "Storage District Act," said consumers will be unable financially to stand the burden; that the agreed purchase price is not based upon proper valuation of the elements of property, but is a negotiated figure considerably in excess of any fair and true value of said property; that the voting power in the water storage district is based upon the assessed valuation and ownership of land included therein and that by reason of its vast land holdings Miller & Lux, Incorporated, dominated the election within the district and the individual landowners, who are consumers of this utility, to all practical purposes, have had no voice whatsoever in the policies or action of the board of directors of the district and no power to prevent this request of the district for authority to purchase the property.

Protest upon practically identical grounds was also filed by James J. Stevinson, a corporation, but was subsequently withdrawn.

Public hearings in the matter were held in Fresno, Los Banos and San Francisco after all interested parties had been notified and given an opportunity to be heard. The matter was taken under submission and is now ready for decision.

The grounds of protest direct themselves, with the exception hereinafter noted and commented upon, to the policy of the law expressed in the Water Storage District Act and to the possibility of administration in the future by the duly constituted officers of the district to the detriment of these particular protesting consumers. Under this head may be classed all of the grounds of protest of the objecting consumers with the exception of the protest on the ground that, by reason

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of its vast land holdings. Miller & Lux, Incorporated, dominated the election within the district, and these consumers have had no voice whatever in the affairs of the district and that the proposed sale contract has been entered into between the corporation controlled by Miller & Lux, Incorporated, and directors of the water storage district, a majority of whom have been elected by Miller & Lux, Incorporated, and were Miller & Lux respresentatives on the board of the district and, therefore, the contract has not received that independent and fair consideration by directors uncontrolled by Miller & Lux, Incorporated, which it should have on behalf of the landowners within the district. However, it appears from the evidence that at a time when a previous report was made to the state engineer for his consideration as to whether the plan proposed in the report submitted to him for consideration was a feasible one, this same objection was there raised, and that, pursuant to said objection, all members of the board of directors of the storage district who were Miller & Lux representatives resigned from the board and the state engineer suggsted four individuals, men of unquestioned integrity and good judgment who have the best interests of this community in mind, all of whom were appointed to membership on the board. In the membership of the district board, as the same was constituted at the time the contract, approval of which is sought, and this application were presented to it for consideration, there were no members who could have been said to be the representatives of Miller & Lux, Incorporated. After a consideration of the project as it is now alleged in the petition to have been formed, these directors of the district have determined to purchase the properties from the utility company upon the basis set forth in the contract, Exhibit "F" attached to the application.

Under the provisions of the "Water District Act," the duty is imposed and the power conferred upon the proper officials of the district to make determination as to what properties are necessary for the proper functioning of the storage district, the amount that shall be paid therefor and the manner in which the district, after the acquiring of such properties as it deems necessary, shall be operated. The district, through its proper officers, having made this determination, it but remains for the Commission to determine whether or not the utility should be permitted to sell its properties and discontinue service.

The policy of the Commission heretofore has been, in applications of this character, to see either that all consumers, which have theretofore been served by a public utility, when it is transferred to a governmental agency, are either included within the boundaries of the governmental agency or district, or, if not so included, that thereafter service be compelled by the district and protected to the consumer whose lands are excluded from the boundaries of the district.

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In re Southern California Mountain Water Company, to sell, etc., 1 C. R. C. 520.

The contract to purchase has received the deliberate consideration of a board of directors capable of giving and presumably having given to it serious consideration and this board has exercised its power and discretion in making its determination to purchase the properties at the price agreed upon.

No reason has been shown justifying a departure from the policy heretofore established by this Commission.

It appears from the evidence received at the hearing that there is a great difference of opinion as to the quantity of water the canal company has a right to divert from the San Joaquin River. This subject of water rights has been a source of litigation between the canal company and Miller & Lux, Incorporated, owners of 80 per cent of the capital stock of the canal company, on the one hand and owners of lands riparian to and appropriators of water from the San Joaquin River, on the other; considerable of this litigation is still pending but, to a great extent, will be eliminated by the formation of the district and the carrying out of the plans of the district, which prospective plans when completed include the purchase by the district of practically all of the claimed water rights of the parties litigant in the pending controversies.

It appears further that there is no storage available to the canal system, the water distributed being diverted directly into the distributing canals from the Mendota Dam, located below the junction of the Fresno Slough of the San Joaquin River.

The system now furnishes water for irrigation purposes to approximately 148,200 acres of land, 57,004 acres of which are owned by Miller & Lux, Incorporated; of the 57,004 acres above mentioned 44,470 acres are the "grass lands" of Miller & Lux, Incorporated, for service to which "grass lands" the canal company now contends it acts only in the capacity of a transporting medium of the so-called "grass land" water, which, it is claimed, is the private water right of Miller & Lux, Incorporated. The system also furnishes a small amount of water for domestic and industrial purposes.

The San Joaquin Water Storage District was organized in 1924, under and by virtue of the "California Water Storage District Act" and amendments thereto. This district is the first district to be formed under the act.

By reason of the general yearly failure of the unregulated stream flows of the San Joaquin River to provide sufficient water to meet the irrigation demands throughout the entire season and the inability of the various irrigation companies and irrigation districts, using or seeking to use waters of the San Joaquin River for their various proj-

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ects, individually to finance the construction of the necessary storage facilities and to undertake any water development by reason of the endless litigation, which has heretofore prevented all such projects, the water storage plan was adopted with the idea of including within its boundaries the lands now served by the several irrigation systems, including those within the Madera Irrigation District, together with certain areas of land not now supplied with water, and with these combined resources develop sufficient storage on the San Joaquin River to insure an adequate water supply to irrigate approximately 550,000 acres, to construct and place in operation a drainage system and in effect acquire all of the rights of the various contending parties to waters of the San Joaquin River, together with certain water rights now claimed by Miller & Lux, Incorporated, to be owned in its capacity as a private corporation and, after joining of all these properties, to operate the district freed from most of the litigation which has for years been pending concerning the right to ownership of conflicting claims to water.

It further appears in the evidence that the canal system has in the past and is now furnishing water for the irrigation of 12,534 acres of "crop lands" belonging to Miller & Lux, Incorporated, which, under the proposed project, is to be excluded from the boundaries of the storage district. This 12,534 acres is item "3" on "Map showing lands heretofore irrigated by the respective water rights and acreages of the same," which map is marked Exhibit "A" and is so designated and referred to in contract marked Exhibit "F" and made a part of the petition of the applicants herein, the particular 12,534 acres being colored in light green on said map. It also appears that the canal system has in the past and that it is now furnishing water either as a public utility or as a transportation agency for the irrigation of the following described areas also belonging to Miller & Lux, Incorporated, and which are to be excluded from the boundaries of the district: 37,420 acres of land designated as item "5" on said map Exhibit "A" and colored in brown thereon; 7050 acres of land designated as Item "10" on said map Exhibit "A" and colored thereon in light blue hatched with brown.

There is also excluded from the boundaries of the district 1276 acres of land belonging to persons other than Miller & Lux, Incorporated, which have heretofore been irrigated by the canal system, designated as item "4" and shown on said map Exhibit "A," being colored thereon in orange.

It appears also from the record that the system has heretofore and is now selling water for domestic and industrial uses to the city of Los Banos, to the city of Dos Palos, to the city of South Dos Palos, and is also furnishing the Southern Pacific Company at Los Banos, the

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Southern Pacific Company at Firebaugh, the Standard Oil Company at Los Banos and Dos Palos and the Associated Pipe Line at Brito and Silaxo, and the Golden State Milk Products Company at Los Banos with water for domestic and industrial uses.

The Commission is requested, through the attorney for the applicant water storage district, to make certain determinations with reference to matters concerning the future operation of its irrigation project. These requests, with the exceptions which we shall hereafter note, have to do with the manner in which this district shall hereafter conduct its affairs with reference to the waters which may be procured on the consummation of the proposed purchase with reference to lands which have theretofore been irrigated by the system and which are included within the boundaries of the district.

As stated above, with reference to these particular questions, we believe them to be matters of policy to be determined by the properly elected and qualified officers of the district and matters entirely beyond the jurisdiction of the Commission.

As stated in the case above cited, *In re Southern California Mountain Water Company*, 1 C. R. C. 520, the concern of the Commission is with those consumers who remain without the boundaries of the district, and, as to those questions which affect service outside of the district, we believe the order hereinafter suggested should protect and direct continued service by the district to said consumers, unless such service is waived or good cause shown for discontinuance.

The contract which is attached to the petition, marked "Exhibit F" and made a part thereof, in substance, provides that the district binds itself on the acquisition of the properties in the petition mentioned to continue service to all consumers of the canal company, whether or not said service has been rendered within or without the boundaries of the storage district, and further provides that, with respect to those irrigation consumers whose lands are located within the boundaries of the district, service thereafter shall be rendered according to the provisions of the "Water Storage District Act," but that said lands shall be assessed for benefits and in all other respects shall be subject to the provisions of said act and that, as to all consumers of the canal company whose lands are situated without the boundaries of the district, such obligation to continue service thereto is contingent upon said consumers paying the district all legal charges for said service. This provision of the contract is broad enough to protect each and all of the consumers of the canal company who are, after the transfer, entitled to receive service from the system.

Miller & Lux, Incorporated, stated at the hearing, through their duly authorized representatives, that the Miller & Lux corporation was desirous of waiving its rights to receive water from the district on

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12,534 acres of "crop land" above designated as item "3," map Exhibit "A," and upon the 37,420-acre tract, designated as item "5" on map Exhibit "A," and upon the 7050-acre tract, designated as item "10" on map Exhibit "A."

Under the circumstances, the district, the properties of the system proposed to be purchased by the district and the canal company should, after the properties have been conveyed to the district, be relieved from any obligation to serve any of the said lands, except the 1276 acres, item "4" on map Exhibit "A."

So that in the future there may be no question as to the identity of the lands which are either waiving or retaining rights to receive water from the district and from the irrigation system to be purchased from the canal company, there should be filed in this proceeding a description by governmental subdivisions, or other good and sufficient descriptions, of the respective areas above referred to as items "3," "4," "5" and "10" on map Exhibit "A."

With reference to the service in the future by the district to the 1276 acres, designated as item "4" on map Exhibit "A" and to the domestic, commercial and/or industrial service to the city of Los Banos, the city of Dos Palos, the city of South Dos Palos and to the Southern Pacific Company at Los Banos and the Southern Pacific Company at Firebaugh, the Standard Oil Company at Los Banos, and the Standard Oil Company at Dos Palos, the Associated Pipe Line at Brito, the Associated Pipe Line at Silaxo, and the Golden State Milk Products Company at Los Banos, and their respective successors in interest, the district shall continue such service in the future from the waters authorized to be purchased to such extent as may be necessary in the future for a proper and adequate service at reasonable rates.

Under the circumstances developed by the evidence admitted in the proceeding and subject to the conditions hereinafter stated, an order should be issued in the above entitled proceeding, permitting the San Joaquin and Kings River Canal and Irrigation Company to transfer its utility properties referred to in the petition and described in the exhibits above mentioned, attached to the petition, for the sum of $4,400,100.

In authorizing the transfer of this public utility property to the water storage district, it should be distinctly understood that the Commission does not thereby in any manner endorse or approve or find upon the reasonableness of the value claimed or of the reasonableness of the price which the district has agreed to pay for the physical properties and water rights of this utility. As to whether or not the project is a feasible one, considered as a whole, is a matter under the "Water Storage District Act," delegated to the board of directors of the dis-

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trict and to other public bodies and, finally, to the landowners within the district.

Neither should the authorization by this Commission to make this transfer be considered as an approval by the Commission of any proposed contract by the district with other bodies, under which it is sought to define the water rights and the conflicting claims of any persons thereto, but should be considered solely as an authorization by this Commission to the public utility company to dispose of its properties at the price named in the petition, to wit, the sum of $4,400,100.

The following form of order is suggested:

ORDER.

The San Joaquin and Kings River Canal and Irrigation Company, Incorporated, having made application to transfer its properties, rights and interests to San Joaquin River Water Storage District, which joins in the application, public hearings having been held thereon, the matter having been submitted and the Commission being fully advised in the premises;

It is hereby ordered, that San Joaquin and Kings River Canal and Irrigation Company, Incorporated, a corporation, be and it is hereby authorized to transfer, for the sum of $4,400,100, to the San Joaquin River Water Storage District, a public corporation, its public utility properties, water rights and other interests as more particularly described in Exhibit "A," Exhibit "B" and Exhibit "C," attached to the application herein and by said application made a part hereof, subject, however, to the following further terms and conditions:

1. The authority herein granted shall apply only to such transfer as shall have been made on or before December 31, 1928, and a certified copy of the final instrument of conveyance shall be filed with this Commission by the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, within thirty days from the date upon which it is executed.

2. Within thirty days from the date that said company actually relinquishes control and possession of the property herein authorized to be transferred, it shall file with this Commission a certified statement indicating the date upon which such control and possession were relinquished.

3. The consideration involved in this transfer shall not be urged upon this Commission, or any other public body, as a finding of value for rate fixing or for any purpose other than for the transfer herein.

4. Upon assuming control and possession of the properties herein authorized to be transferred, San Joaquin River Water Storage District shall immediately, and thereafter, continue in adequate and proper amounts and at reasonable rates the water service which said San Joaquin and Kings River Canal and Irrigation Company has obligated

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itself to furnish as a public utility to the area containing approximately 1276 acres of land lying without the boundaries of said district and designated as item "4" on the map marked Exhibit "A" attached to the application herein, and also domestic, commercial and/or industrial water service to the city of Los Banos, the city of Dos Palos, the city of South Dos Palos, the Southern Pacific Company at Los Banos and at Firebaugh, the Standard Oil Company at Los Banos and at Dos Palos, the Associated Pipe Line Company at Brito and at Silaxo, the Golden State Milk Products Company at Los Banos and their respective successors in interest, and any such consumers and their successors in interest other than set forth above who may now be receiving a similar domestic, commercial and/or industrial water service from said company.

5. That, upon final completion of the transfer of the properties as herein authorized, said San Joaquin River Water Storage District may discontinue water service to the areas of land now owned by Miller & Lux, Incorporated, and more particularly described in the exhibits attached to the application herein as follows:

(a) Area containing 12,534 acres, more or less, and designated as item "3" on map marked Exhibit "A."

(b) Area containing 37,420 acres, more or less, and designated as item "5" on map marked Exhibit "A."

(c) Area containing 7050 acres, more or less, and designated as item "10" on map marked Exhibit "A."

6. That, within sixty days from the date of this order, said San Joaquin and Kings River Canal and Irrigation Company shall file with this Commission a description, by governmental subdivision, or by metes and bounds, or by other good and sufficient legal description, of each of the areas of land referred to in the order herein as item "4," item "3," item "5" and item "10" on said map marked Exhibit "A."

7. That, upon final completion of the transfer of the properties, rights and interests of this utility in full compliance with the terms and conditions of the order herein, said San Joaquin and Kings River Canal and Irrigation Company and its said properties, rights and interests shall thereupon and thereby stand relieved of all public utility obligations and liabilities heretofore incurred in connection therewith.

For all other purposes, the authority herein granted shall become effective twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this seventeenth day of February, 1928.

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DECISION NO. 19377.

CORONADO TRANSFER; PACIFIC TRANSFER, VAN AND TRUCK COMPANY; OPPENHEIMER TRUCK LINE, AND TIA JUANA EXPRESS

vs.

UNITED PARCEL SERVICE OF SAN DIEGO, A CORPORATION.

Case No. 2407.

Decided February 17, 1928.

AUTOMOTIVE TRANSPORTATION—CONTRACT CARRIERS.—United Parcel Service of San Diego held to be a private carrier. Complaint dismissed for lack of jurisdiction.

EVIDENCE—ADMISSIBILITY.—In a complaint alleging unauthorized operation as a common carrier, evidence tending to show that defendant was delivering over its regular route parcels collected in another city and forwarded by an authorized carrier was excluded as not being within the issues of the case, the complaint specifically limiting the alleged illegal operation to shipments originating in one city and destined to other designated points.

AUTOMOTIVE TRANSPORTATION—WHAT CONSTITUTES—CONTRACT CARRIERS.—A parcel delivery company incorporated to carry on the business of a private carrier, for and under contract with parties voluntarily selected, which has reserved and exercised the right of selection in respect to shippers served, and which does not hold itself out to serve the public generally, in the absence of evidence that contracts were made, or attempted to be made to an unlimited number or that its operations were not carried on in good faith, is a private carrier over which the Commission has no jurisdiction. (*Frost* vs. *Railroad Commission*, 271 U. S. 583; common carrier defined, see *Associated Pipe Line Co.* vs. *Railroad Commission*, 176 Cal. 518.)

H. J. Bischoff, for Complainants.
Devlin and Brookman, by *Douglas Brookman*, for Defendant.
Richard T. Eddy, for Inter City Parcel Service of San Diego, Intervener.

BY THE COMMISSION.

OPINION.

Complainants herein are engaged in the transportation of property by motor truck between San Diego and various adjoining towns, operating either under authority of certificates granted by this Commission or by virtue of prescriptive rights established prior to May 1, 1917. They complain that defendant United Parcel Service of San Diego is conducting, without authority from the Commission, a common carrier business for the transportation of parcels between San Diego on the one hand, and Coronado, National City, Chula Vista, Nestor, Palm City, San Ysidro, La Mesa, Lemon Grove and other points on the other hand, thus operating in competition with complainants. Complainants pray for an order restraining said defendant from continuing such operation unless and until it shall have obtained from the Railroad Commission a certificate of public convenience and necessity.

Defendant duly filed its answer to the complaint denying that it is now or at any time has been engaged in the transportation of freight as a common carrier between the points specified; admits that it has

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not obtained from the Railroad Commission a certificate of public convenience and necessity, and avers that its operations are such as would not bring it within the jurisdiction of the Commission.

Upon the issues thus joined a public hearing was conducted by Examiner Gannon at San Diego, the matter was duly submitted on briefs and is now ready for decision.

Complainants called two witnesses in support of their allegations, both employees of the defendant corporation. One of these, its manager, testified that defendant had commenced doing business in San Diego August 15, 1927, and had caused to be inserted in a San Diego daily newspaper an announcement of its entrance into that field. This advertisement set forth that defendant offered to furnish delivery service in San Diego similar to that rendered by United Parcel Service in various other metropolitan centers. It is admitted that in some instances such service is of the common carrier type, and in others of the private carrier type. Witness testified that defendant had entered into written agreements with approximately 30 shippers in San Diego for the delivery of their packages to the towns named, San Diego in each instance being the point of origin of such shipments. The witness further testified that he had been approached by other shippers who desired the service but for various reasons he had declined their business and that no service was in any case rendered except under contract.

The other witness called was employed by defendant to interview shippers for the purpose of soliciting their business. His testimony was that he had been instructed by his superiors to exercise great care in the selection of persons to whom the service was offered and in no case to render such service except as a result of a contract duly signed. He had called on various merchants to familiarize himself with the nature of their business, the probable volume thereof, and other minor considerations in which he might be interested. The contracts vary as to rates, terms, etc., and the matter of signing a contract might be, and frequently was, the subject of prolonged negotiations. Witness estimated the number of contracts actually entered into at 3 per cent of the total number of shippers in San Diego. He called on about 100 firms and wrote 15 contracts, the other 85 prospects being rejected by him for one reason or another. The witness testified he made no offer of service generally to the public. All the contracts were in written form and there was no uniformity as to their provisions. Approximately 300 packages per day were picked up in San Diego, of which 250 were delivered within the limits of that city, about 15 per cent going to other points.

Complainants undertook to show that defendant was delivering,

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over its regular route, parcels collected in Los Angeles by the United Parcel Service of Los Angeles and forwarded to San Diego by an authorized carrier, but this testimony was excluded as not being within the issues of the case. The complaint specifically limits the alleged illegal operation to shipments originating in San Diego and destined to other designated points.

There is no dispute as to the facts herein and we are called upon to determine only whether the operations of defendant company are those of a common or a private carrier.

The evidence shows that United Parcel Service of San Diego was incorporated "to conduct and carry on the business of a private carrier * * * but only for and under contract with parties whom it may voluntarily select; providing that * * * this corporation shall not have the power and shall not engage in the business of a common carrier." From the inception of the business defendant has reserved and exercised the right of selection in respect to the shippers served but, generally speaking, it appears willing to enter into a contract with any individual or firm handling a class of business which may appear desirable.

To impress upon one the character of common carrier it must be shown that he "holds himself out as such to the world; that he undertakes generally and for all persons indifferently to carry goods and deliver them for hire; and that his public profession of his employment be such that if he refuses, without some just ground, to carry goods for anyone, in the course of his employment and for a reasonable and customary price, he will be liable to an action."

In *Associated Pipe Line Co.* vs. *Railroad Commission* (176 Cal. 518), the court quotes the above definition and by way of further clarification adds:

> "It is one who offers to carry goods for any person between certain termini, and who is bound to carry for all who tender their goods and the price of carriage. Hence, in order to bring petitioners within the purview of the provisions under consideration, it must have been made to appear that they had voluntarily devoted their transportation facilities to the indiscriminate use of the public for hire, thus constituting them common carriers."

In the case of *Munn* vs. *Illinois*, decided by the U. S. Supreme Court and reported in 94 U. S. at page 113, it was said:

> "When, therefore, one devotes his property to a use in which the public have an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

It was suggested in *Frost and Frost* vs. *Railroad Commission of California* (271 U. S. 583) that any carrier might, "by the simple device of making private contracts to an unlimited number, secure all the privileges afforded common carriers without assuming any of their duties or obligations."

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There is no evidence here that defendant made, or attempted to make, contracts to an unlimited number. Nor is there any evidence that its operations were not carried on in good faith. It was not even "posing" as a private carrier. Out of a total of approximately 1000 potential shippers it selected 100 as offering the greatest possibilities and of this number 85 were finally rejected for one reason or another. To the 15 contracts thus signed 15 more were subsequently added in the same manner, making a total of 30 contracts now in force and effect.

We have given careful consideration to the evidence in this proceeding and conclude the testimony does not sustain a finding that defendant was operating as a common carrier. Its service is confined to shippers with whom it has contracts, and to them only, and in no sense does it hold itself out to serve the public generally. So far as the record indicates its operations are those of a private carrier. In view of the determination of this question which has been made by the U. S. Supreme Court in the Frost and Frost case, *supra*, holding that the jurisdiction of the Railroad Commission over auto truck carriers is limited to those who operate between fixed termini or over regular routes, as common carriers, we must find that the operations of defendant are those of a private carrier over which this Commission has no jurisdiction.

The complaint will, therefore, be dismissed for lack of jurisdiction.

ORDER.

A public hearing having been held in the above entitled complaint, the matter having been duly submitted, the Commission being fully advised, and basing its order on the findings of fact appearing in the foregoing opinion;

It is hereby ordered, that the complaint in this proceeding be and the same is hereby dismissed for lack of jurisdiction.

Dated at San Francisco, California, this seventeenth day of February, 1928.

DECISION No. 19380.

IN THE MATTER OF THE APPLICATION OF DAVIS AUTO TOURS, INC., FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A SIGHT-SEEING PASSENGER SERVICE AS A COMMON CARRIER FROM SANTA BARBARA TO POINTS IN VICINITY THEREOF AND RETURN TO SANTA BARBARA.

Application No. 14317.

Decided February 17, 1928.

CERTIFICATES—SIGHT-SEEING OPERATION.—Davis Auto Tours, Inc., authorized to operate sight-seeing passenger service from Santa Barbara to points in vicinity.

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Richard T. Eddy, for Applicant.

BY THE COMMISSION.

OPINION.

In the above application to the Commission, the Davis Auto Tours, Inc., seeks a certificate to operate an automobile sight-seeing service in and about the city of Santa Barbara. A public hearing was held thereon at Santa Barbara before Examiner Rowell on February 1, 1928. No protests were made to the granting of such certificate.

Four distinct tours are proposed by applicant, described as follows: Tour No. 1, Garden Tour de Luxe, which will include the business and residential sections of Santa Barbara and a comprehensive suburban drive in the districts north and east of the city; Tour No. 2, Scenic Tour, a drive in the suburban section to the north and west of Santa Barbara; Tour No. 3, Ojai Valley Tour, a trip to the Ojai Valley to the east of Santa Barbara by way of Ventura and Santa Paula; and Tour No. 4, San Marcos Pass and Santa Ynez Valley Tour, which is westward through the Santa Ynez Valley to Buellton and return along the Pacific highway.

Mr. Davis, the president of the applicant corporation, has for a number of years personally conducted each of the above tours, and at the hearing testified that he has provided such service in response to the demand from many hotels and travel bureaus. A number of witnesses testified that there was a public need for a sight-seeing service of the nature proposed. No other carrier is now rendering such service.

Tour No. 1 is to be a daily service, whereas the others will be upon demand only, when four or more persons shall present themselves for transportation. The transportation charge for each tour shall cover the entire trip over the respective route, and no one-way or intermediate service is contemplated. Short stops are provided for at Santa Barbara Mission and other points of interest. Applicant proposes to charge fares in accordance with Exhibit "A" attached to the application, and to operate in accordance with the schedules and with the equipment as shown in Exhibits "B" and "C." It is hereby found, therefore, that public convenience and necessity require such service and an order will be entered accordingly.

Applicant is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited to the number of rights which may be given.

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ORDER.

Davis Auto Tours, Inc., having filed its application to operate an automotive sight-seeing passenger service as a common carrier from Santa Barbara to points in the vicinity thereof and return to Santa Barbara, a public hearing thereon having been held, the matter having been duly submitted and being now ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Davis Auto Tours, Inc., of an automotive sight-seeing passenger service from Santa Barbara to points in the vicinity thereof, having one terminus, namely, Santa Barbara, over and along the following routes, which routes are distinct and separate one from the other but which together shall constitute one operative right:

Tour No. 1. From Santa Barbara to points in the vicinity thereof and return, via Santa Barbara Mission, Mission Ridge drive, McAdoo drive, Eucalyptus Hill drive, Montecito, East Valley road, Sheffield drive, Pacific highway, Channel drive and East boulevard.

Tour No. 2. From Santa Barbara to points in the vicinity thereof and return, via Mesa drive, Cliff drive, Hope Ranch Estates, Modoc road, Mission Canyon drive, Rattlesnake Canyon drive and McAdoo drive.

Tour No. 3. From Santa Barbara to Santa Paula and return, Pacific highway, via Carpinteria, Ventura, Ojai and Casitas Pass.

Tour No. 4. From Santa Barbara to Buellton and return, via Pacific highway, Goleta, San Marcos Pass, Santa Ynez, Los Olivas, Solvang, Buellton, Gaviota Pass, and Naples.

The service described as Tour No. 1 shall be rendered daily if any person shall present himself for transportation. The service described as Tours Nos. 2, 3 and 4 shall be upon demand only, when four or more persons shall present themselves for transportation.

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to Davis Auto Tours, Inc., for such operations as a common carrier, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariffs of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

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3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this seventeenth day of February, 1928.

DECISION No. 19381.

IN THE MATTER OF THE INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE REASONABLENESS OF PROPOSED STANDARDS FOR PROTECTION OF CROSSINGS OF HIGHWAYS WITH RAILROADS AND STREET RAILROADS.

Case No. 2292.

Decided February 17, 1928.

CROSSINGS—IDENTIFICATION.—Supplement No. 2 to General Order 75 (canceling Supplement No. 1) adopted, relative to the identification of public crossings and crossing signs.

BY THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Good cause appearing;

It is hereby ordered, that on and after the date of this order, section V (a) of General Order No. 75, and section III as set forth in supplement No. 1 of said general order be and they are amended to read as follows:

III. Identification of Public Crossings.

Unless otherwise specified by this Commission each carrier shall paint or otherwise maintain on the crossing sign post or other structure at each public crossing of its tracks, an identification number, preceded by the words "Crossing No.", except at crossings of named streets within incorporated cities where the carrier is not required to maintain a Standard No. 1 or other type of special crossing sign on post, a wig-wag or crossing gates, provided that this Commission shall have assigned such identification number and shall have notified the carrier thereof. Such number shall be placed so as to be readily legible from the highway. In all matters pertaining to any crossing brought to the attention of the Commission, reference shall be given to the assigned crossing number.

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V (a). Crossing Signs.

Each public crossing at grade of a road, highway or street with a track of a railroad or of a street railroad shall be protected by at least one crossing sign, constructed and installed in substantial conformity with the specifications hereinafter illustrated and designated as Standard No. 1, except at crossings where the carrier maintains crossing gates, two wigwags or crossing gates with one or more wigwags.

It is hereby further ordered, that the above amendments to said General Order No. 75 and supplement No. 1 thereto shall be designated as supplement No. 2 to General Order No. 75, canceling supplement No. 1 of General Order No. 75.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this seventeenth day of February, 1928.

SUPPLEMENT NO. 2 TO GENERAL ORDER NO. 75.
(Cancels Supplement No. 1 of General Order No. 75.)

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Regulations governing the protection of crossings at grade of roads, highways and streets with railroads or street railroads in the State of California.

Approved February 17, 1928. Effective February 17, 1928.

III. Identification of Public Crossings.

Unless otherwise specified by this Commission each carrier shall paint or otherwise maintain on the crossing sign post or other structure at each public crossing of its tracks, an identification number, preceded by the words "Crossing No.", except at crossings of named streets within incorporated cities where the carrier is not required to maintain a Standard No. 1 crossing sign, or other special type of sign on post, a wigwag or crossing gates, provided that this Commission shall have assigned such identification number and shall have notified the carrier thereof. Such number shall be placed so as to be readily legible from the highway. In all matters pertaining to any crossing brought to the attention of the Commission, reference shall be given to the assigned crossing number.

V. (a). Crossing Signs.

Each public crossing at grade of a road, highway or street with a track of a railroad or of a street railroad shall be protected by at least one crossing sign, constructed and installed in substantial conformity with the specifications hereinafter illustrated and designated as

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Standard No. 1, except at crossings where the carrier maintains crossing gates, two wigwags or crossing gates with one or more wigwags.

Approved and dated at San Francisco, California, this seventeenth day of February, 1928.

RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA,
By H. G. MATHEWSON, Secretary.

DECISION No. 19383.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, FOR AUTHORITY TO ISSUE AND SELL TWO HUNDRED NINETEEN THOUSAND THREE HUNDRED FOURTEEN SHARES OF ITS COMMON STOCK OF THE TOTAL PAR VALUE OF FIVE MILLION FOUR HUNDRED EIGHTY-TWO THOUSAND EIGHT HUNDRED FIFTY DOLLARS.

Application No. 14378.

Decided February 18, 1928.

SECURITIES—ISSUES—STOCK.—Southern California Edison Company authorized to issue and sell 219,314 shares of its common capital stock of the total par value of $5,482,850.

SECURITIES ISSUES—JURISDICTION OF COMMISSION—IN GENERAL.—As to a request for authorization to issue and sell additional common stock to common and/or preferred stockholders only, the Commission made no determination, nor believes it to be within its jurisdiction to make such a determination, as to whether or not a utility has the right to limit the offering of the common stock to those two classes of stockholders, and the order authorized the issue of stock to applicant's present stockholders, their successors and assigns (29 C. R. C. 463, 464).

Roy V. Reppy and *Gail C. Larkin*, for Applicant.

BY THE COMMISSION.

OPINION.

In the above entitled matter the Railroad Commission is asked to make its order authorizing Southern California Edison Company to issue and sell 219,314 shares of its common capital stock, of the aggregate par value of $5,482,850, at par—$25 a share—to its common and/or original preferred stockholders for the purpose of reimbursing its treasury on account of moneys used in retiring at maturity $995,000 of bonds and to finance the cost of extensions, betterments and additions to its properties.

In Exhibit "A," attached to the application, the company reports its authorized and outstanding capital stock, as of November 30, 1927, as follows:

Class of stock	*Authorized*	*Outstanding*
Original preferred stock	$4,000,000 00	$4,000,000 00
Preferred Series "A"—7 per cent	30,000,000 00	25,558,100 00
Preferred Series "B"—6 per cent	50,000,000 00	47,595,625 00

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Preferred Series "C"—5.5 per cent	$20,000,000 00	$7,669,125 00
Preferred Series "D"—5 per cent	21,000,000 00	
Common	125,000,000 00	60,022,900 00
Total	$250,000,000 00	$144,845,750 00

The $60,022,900 of common stock reported outstanding includes $10,836,628 of common stock controlled by the company through ownership of the stock of Pacific Light and Power Corporation, which, if deducted, leaves net common stock outstanding of $49,186,272. In addition to the amounts outstanding, the company reports, as of the same date, preferred stock subscriptions of $3,788,275 and common stock subscriptions of $2,131,725.

The company's outstanding funded debt, also as of November 30, 1927, is reported at $134,962,700, consisting of the following:

Mentone Power Company, first mortgage 5s, due 1931		$37,000 00
Pacific Light and Power Company, first mortgage 5s due 1942		5,759,000 00
Pacific Light and Power Corporation first and refunding 5s, due 1951		5,721,000 00
Mt. Whitney Power and Electric Company, first mortgage 6s, due 1939		3,196,000 00
Santa Barbara Gas and Electric Company, first mortgage 5s, due serially 1920-1941		690,700 00
Southern California Edison Company:		
General mortgage 5s, due 1939		13,360,000 00
General and refunding bonds due 1944		20,225,000 00
5s	$10,000,000 00	
5½s	10,225,000 00	
Refunding mortgage bonds		85,000,000 00
5s due 1951	$55,000,000 00	
5s due 1952	30,000,000 00	
Debentures, 7s, due 1928		974,000 00
Total		$134,962,700 00

In addition the company reported outstanding $20,000 of bonds, against which funds for retirement had been deposited with the trustee and the mortgages released, consisting of $11,000 of Edison Electric Company of Los Angeles 30-year 6 per cent gold bonds due December 2, 1927, and $9,000 of Edison Electric Company of Los Angeles first mortgage 5 per cent bonds due in 1929.

In making this application the company reports that it desires to use a portion of the proceeds to be received from the sale of the stock to reimburse itself for the retirement at maturity of $995,000 of bonds, consisting of the $974,000 of debentures that became due on January 15, 1928, $11,000 of the Edison Electric Company of Los Angeles bonds that became due on December 2, 1927, and $10,000 of the Santa Barbara Gas and Electric Company bonds that became due on July 1, 1927. It asks permission to consolidate the balance of the proceeds derived from the sale of its stock with the proceeds from the sale of other stock heretofore authorized to be issued and use said proceeds to finance in part expenditures for extensions, betterments and additions to its properties, as described in some detail in its annual budget for

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the year 1928, heretofore filed in Application No. 14187, which expenditures were reported at $32,091,000, consisting of the following:

Big Creek construction	$5,982,000 00
220 k.v. lines and stations	2,122,000 00
New steam plants	5,712,000 00
Auxiliary unit—Long Beach steam plant	275,000 00
Civil engineering department	50,000 00
Rights of way	1,000,000 00
Miscellaneous system betterments	16,950,000 00
Total	$32,091,000 00

To meet in part the total expenditures for 1928 the company reports due, on December 31, 1927, on account of the unpaid balances on stock subscriptions the sum of $4,114,795.44 and it appears that of the stock, of all classes, heretofore authorized, there remained about $7,000,000 par value unsold, so that the issue of additional securities seems necessary to take care of all the estimated construction requirements.

The company reports that it proposes to offer the additional $5,482,850 of common stock at par to the holders of its common and/or its original preferred stock at the rate of one share of such stock for every ten shares of common and/or original preferred stock now held, and that it will issue transferable stock subscription warrants to its stockholders entitled to subscribe to the new issue of common stock. It anticipates that the entire issue will be taken by its stockholders or their assigns. It does not ask permission to use any part of the stock proceeds to pay commissions or selling expenses.

The company does not ask for an order authorizing the issue and sale of the additional common stock to its common and/or original preferred stockholders only. However, as we have stated in a former decision, No. 18082, dated March 19, 1927, we have made no determination, nor do we believe it to be within the jurisdiction of this Commission to make such a determination, as to whether applicant has the right to limit the offering of the common stock to those two classes of stockholders named, and accordingly, the order herein will authorize the issue of stock to applicant's present stockholders, their successors and assigns.

ORDER.

Southern California Edison Company having applied to the Railroad Commission for permission to issue stock, and the Railroad Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the money, property or labor to be procured or paid for through such issue is reasonably required for the purposes specified herein, and that such purposes are not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Southern California Edison Company be and it hereby is authorized to issue and sell, on or before December 31,

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1928, at not less than $25 a share, 219,314 shares of its common capital stock of the aggregate par value of $5,482,850; provided that such stock be sold only to present stockholders, subscribers or their assigns.

It is hereby further ordered, that Southern California Edison Company be and it hereby is authorized to use $995,000 of the proceeds from the sale of the stock herein authorized to be issued to reimburse its treasury on account of expenditures made in retiring at maturity the $995,000 of bonds and debentures referred to in the foregoing opinion, and to consolidate the remaining proceeds with the proceeds from the sale of stock heretofore authorized to be issued and to use said proceeds to finance in part the cost of extensions, betterments and additions to its properties described in its 1928 construction budget heretofore filed in Application No. 14187.

The authority herein granted is subject to the following conditions:

1. Only such expenditures as are properly chargeable to fixed capital accounts under the uniform system of accounts prescribed by this Commission may be financed with the stock proceeds referred to herein.

2. Applicant shall keep such record of the issue and sale of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted shall become effective ten days after the date hereof.

Dated at San Francisco, California, this eighteenth day of February, 1928.

Decision No. 19384.

IN THE MATTER OF THE APPLICATION AND COMPLAINT OF G. L. MORRISON, AS OWNER AND LESSOR OF THE DUNSMUIR-MOUNT SHASTA-WEED STAGE, TO MODIFY AND ALTER THE COMMISSION'S ORDER AND DECISION No. 15215 ON APPLICATION No. 11189, SO AS TO PROHIBIT THE PICKWCK STAGES, A CORPORATION, FROM CARRYING PASSENGERS LOCALLY BETWEEN THE TOWNS OF DUNSMUIR, MOUNT SHASTA AND WEED, CALIFORNIA, AND IN WHICH APPLICATION MRS. M. K. DAVIS, AS LESSEE OF DUNSMUIR-MOUNT SHASTA-WEED STAGE, JOINS.

Case No. 2267; Application No. 11189.

Decided February 20, 1928.

PLEADINGS AND PROCEDURE—PROCEEDING REOPENED.—G. L. Morrison not having received notice of hearing, the above application reopened for further hearing and for taking of evidence upon merits of protest.

PLEADING AND PROCEDURE—FORMAL APPLICATIONS—APPLICATION FOR CERTIFICATE. While, under section 5 of the Auto Stage and Truck Transportation Act, the

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Commission has power to issue or refuse certificates as prayed for, and may attach such conditions and restrictions as public necessity may require, it has been a consistent practice and policy, whenever facts and circumstances justify it, to require every applicant to divulge the names of every stage or truck line, steam railroad or electric railway operating between the points proposed to be served.

PLEADING AND PROCEDURE—HEARING—NOTICE OF HEARING.—The contention that notice of a hearing of a supplemental petition mailed by the Commission to an applicant was sufficient notice and binding upon said applicant with respect to any right of notice he may have been entitled to as regards the hearing on a different application is without merit, for said supplemental petition having been dismissed for lack of jurisdiction was ineffectual for any purpose whatsoever.

PLEADING AND PROCEDURE—IN GENERAL.—The Commission in passing upon the nature and character of any proceeding before it, looks always to the substance and purpose of, and not to the form of said proceeding.

PLEADING AND PROCEDURE—IN GENERAL.—It clearly appearing that an application, or so-called complaint, is in reality a supplemental petition, the mere fact that the proceeding at the time it was filed with the Commission, through inadvertence or otherwise, was given a case or complaint number in no wise affects its real character or purpose.

PLEADING AND PROCEDURE—IN GENERAL.—Section 5 of the Auto Stage and Truck Transportation Act contemplating that the Commission, in the exercise of a sound discretion may entertain and hear any supplemental petition by an interested or aggrieved party to revoke, alter or amend any certificate, irrespective of whether the decision granting the same has become final, a motion to dismiss such a supplemental petition on the ground of lack of jurisdiction for the reason that it is an indirect and collateral attack upon said decision is not well taken and the motion will be denied.

Otto L. Haese and *Allen and McNamara*, by *Mr. McNamara*, for Applicants.
Warren E. Libby and *Frank B. Austin*, for Respondents.

BY THE COMMISSION.

OPINION.

G. L. Morrison, as owner and lessor, and Mrs. M. K. Davis, as lessee of the Dunsmuir-Mount Shasta-Weed Stage, applicants in the above entitled proceeding, allege that said applicant F. L. Morrison is the owner and operator of that certain passenger stage operative right between Dunsmuir and Weed by virtue of this Commission's Decision No. 13528 on Application No. 10030, and that Mrs. Davis is now the lessee thereof and has been ever since June 25, 1926, pursuant to Decision No. 16995 on Application No. 12955; that Pickwick Stages System, a corporation, pursuant to this Commission's Decision No. 7209, on Application No. 5081, operates an auto stage line as a common carrier of passengers and express between San Francisco and the California-Oregon state line north of Cole with the following restrictions as to local service:

> "That no local passengers are to be carried between Woodland and the California-Oregon line unless vacant seats are available in the equipment operated by applicant and such vacant seats are not required for the accommodation of through passengers between points in the State of California and points in the State of Oregon."

That Pickwick Stages System, on June 3, 1925, filed with this Commission its Application No. 11189 for authority to operate a local

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service for the transportation of passengers and express between Redding and the California-Oregon line north of Cole and alleged and asserted therein particularly as justification for said local service:

> "That the following conditions exist which are relied upon by applicant as justification for the granting of a certificate of public convenience and necessity, to wit: That applicant already has the right to transport local passengers on through cars when seats are available under Decision No. 14464 on Application No. 8067; that conditions now exist such as are stated in said Decision No. 14652, made upon Application No. 10112 which require additional local service between Redding and the California-Oregon line north of Cole; that the applicant is the ONLY STAGE OPERATOR operating under a certificate from the Railroad Commission of the State of California over the territory and route covered by the present operations of applicant between Redding and the California-Oregon line north of Cole, California; that at times its through cars operated over said route are loaded to capacity and it is unable to care for local passengers within said territory between Redding and the California-Oregon line; that the only other carrier over said territory is the Southern Pacific Company, and that the restrictions contained in the present operative rights of applicant should be removed by the granting of an additional certificate as herein sought."

Applicants further allege that Pickwick Stages System wilfully and deliberately suppressed and withheld the fact with full knowledge thereof that said G. L. Morrison was an authorized carrier of passengers between Dunsmuir and Weed and intermediate points at the time of filing of its application aforesaid and had been such for a long period of time, and that the Commission was misled by the allegation in said application that the only other carrier over said territory was the Southern Pacific Company.

It is further alleged that by reason of said suppression of and misstatement of facts, said G. L. Morrison was deprived of his right to be heard in protest; that no notice of the pendency and hearing of said Application No. 11189 was ever served upon him and that he had no information thereof of any kind and was thereby deprived of a substantial right and prevented from protecting his rights in the premises. Applicant G. L. Morrison further alleges, in conclusion, that he has always rendered a satisfactory and adequate passenger service between Dunsmuir and Weed and intermediate points and prays for an order of this Commission altering and amending its Decision No. 15215 on Application No. 11189 as follows:

> "Provided, that said Pickwick Stages System, a corporation, shall not engage under the terms and conditions of this certificate in carrying passengers and express packages locally between the towns of Dunsmuir, Mount Shasta and Weed in Siskiyou County, California, but is hereby authorized to carry passengers to or from either of said towns from or to points on its route of operations."

Pickwick Stages System, by written response filed herein, denied generally and specifically all the material allegations of said application.

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Pickwick Stages further allege:

> "That previous to the filing of said Application No. 11189 on June 3, 1925, it filed a supplemental petition in Application No. 5081, seeking the granting of the same relief asked for in the prayer of said Application No. 11189; that said supplemental petition was filed with said Commission on March 20, 1925, and that notice of the hearing of said supplemental petition was given by said Commission to said Dunsmuir-Mount Shasta-Weed Stage and to the owner thereof, G. L. Morrison, for a hearing thereon on said 3d day of June, 1925, and that the hearing thereon was set for ten o'clock a.m. on said June 3, 1925, and that said Morrison and said stage line did not enter any protest to the granting of said supplemental petition, nor appear to make any objections thereto, and that for such reason, owing to said supplemental petition being dismissed for technical reasons, and all parties interested being present at the time, said Commission consented to hear a new application seeking the same relief, at two o'clock p.m. on said June 3, 1925, and gave notice to all parties present; that for such reasons said owner of said Dunsmuir-Mount Shasta-Weed stage has not been deprived of any right from lack of notice, or for any other reason."

Respondent also alleges that immediately after the granting of the certificate under said Application No. 11189 on July 27, 1925, it commenced the rendition of local service between Redding and the California-Oregon line pursuant thereto, and has at all times subsequent thereto maintained such local service for over one year prior to the filing of the above named application and that said corporation has always rendered an adequate local service over said route and that said service has not been rendered for competitive reasons or to destroy the service of applicants herein, but solely to meet the public demand.

Respondent further alleges:

> "That the relief sought therein can not be had nor granted by reason of a complaint against this corporation, but can be had solely by a petition for further hearing in said application No. 11189 seeking a modification of the terms of said Decision No. 15215, pursuant to the provisions of said Automobile Stage and Truck Transportation Act and the Public Utilities Act of the State of California, and that under the complaint filed in the above entitled cause said Commission is without jurisdiction to act or to grant the relief sought by said complaint, and that said complaint should be dismissed for want of jursdiction."

A public hearing in the above named matter was held before Examiner Satterwhite at Dunsmuir, the matter was duly submitted upon briefs and is now ready for decision.

The record in this proceeding shows that Pickwick Stages System, pursuant to a suggestion made by this Commission in its Decision No. 14652 on Application No. 10112, filed a supplemental petition in Application No. 5081, for the purpose of having its local passenger service between Redding and the California state line enlarged and certain restrictions therein removed, such restrictions appearing in Decision No. 7209, being as follows:

> "Provided, however, that the authority herein conveyed does not authorize the carriage of any local passengers between Oakland and Davis; that no local passengers are to be carried between Woodland and the California-Oregon line unless vacant seats are available in the equipment operated by

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applicant and such vacant seats are not required for the accommodation of through passengers between points in the State of California and points in the State of Oregon; and provided, further, that no authority is herein conveyed for the establishment of any local line between any of the intermediate points on the through route herein authorized. * * *"

On June 3, 1925, this supplemental petition, in Application No. 5081, came on regularly to be heard at San Francisco before Examiner Handford and on June 6, 1925, the Commission rendered its decision therein, dismissing said supplemental petition on the ground that it had no jurisdiction to hear it, for the reason,

"* * * that the certificate heretofore granted by Decision No. 7209 on Application No. 5081 has been superseded by the certificate heretofore granted by the Commission's Decision No. 14484 on Application No. 8067 as decided January 17, 1925, such latter certificate being in lieu of the certificate contained in Decision No. 7209, * * *."

The documentary evidence in this proceeding shows that in the interests of expedition and by stipulation of all parties present made during the proceeding on said supplemental petition, Pickwick Stages System immediately prepared and filed a new and original application, being No. 11189, which was filed and heard on the afternoon of June 3, 1927, the same day on which the invalid supplemental petition was submitted to be dismissed. Thereafter, on July 27, 1927, the Commission granted to Pickwick Stages System the desired certificate as sought in Application No. 11189 and annulled all restrictions as to local service between Redding and the California-Oregon state line north of Cole.

The record shows that notice of hearing of the supplemental petition in Application No. 5081 was mailed to the Dunsmuir-Mount Shasta-Weed stage, as required by the rules of this Commission, but no notice of the pendency or hearing of the new and original Application No. 11189 covering the same subject matter was ever given said applicant, G. L. Morrison.

The testimony of G. L. Morrison at the hearing of the instant proceeding shows that he never received any notice of the pendency or hearing of either the said supplemental petition in Application No. 5081 or the new and original Application No. 11189.

It appears that Pickwick Stages System, before it filed either of the above named applications for the removal of its local restrictions as hereinabove set out, possessed full knowledge of the authorized stage operative rights of applicant G. L. Morrison between Dunsmuir and Weed and intermediate points, but omitted entirely to make in either, as required by the rules of this Commission, any reference to such operative rights of G. L. Morrison. This omission is explained by Pickwick Stages System, respondent, to the effect that both applications dealt exclusively with the territory between Redding and the

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California-Oregon state line considered solely as a unit and that it was correct when it was alleged that the Southern Pacific Company was the only common carrier operating over and along this territory and that moreover there was no intention, purpose or design on the part of the respondent, Pickwick Stages System, to mislead or deceive this Commission with respect to the operative rights of G. L. Morrison between Dunsmuir and Weed.

The Commission is of the opinion, after a careful study of the evidence in this proceeding, that there is nothing in the record to justify the conclusion that the Pickwick Stages System wilfully or deliberately suppressed the fact or withheld its knowledge from the Commission that applicant G. L. Morrison was an authorized stage operator between Dunsmuir and Weed and way points.

While it is true, as pointed out by respondent Pickwick Stages System, that under section 5 of the Auto Stage Truck and Transportation Act this Commission shall have power to issue or refuse certificates as prayed for and may attach such conditions and restrictions as public necessity may require, it has been the constant practice and policy of this Commission, whenever the facts and circumstances justify it, to require every applicant seeking a certificate of public convenience and necessity to divulge the names of every stage or truck line, steam railroad or electric railway operating between the points proposed to be served. The reason for this requirement is quite obvious and the instant proceeding affords an excellent illustration of the purpose and need of the rule.

The record shows that G. L. Morrison, as the owner of the local passenger operative rights between Dunsmuir and Weed, was denied the opportunity to be heard in protest against the proposed additional local service sought by Pickwick Stages System, by reason of the fact that he had received no notice and thereby had no opportunity to present the merits of his protest against such an additional service as sought and obtained by Pickwick Stages System.

The Pickwick Stages System contends that the notice mailed to G. L. Morrison by this Commission of the hearing of the supplemental petition in Application No. 5081 was sufficient notice and binding upon said applicant, G. L. Morrison, with respect to any right of notice he may have been entitled to as regards the hearing on Application No. 11189. We are not in accord with such contention for the reason that said supplemental petition was dismissed for lack of jurisdiction by the Commission and it follows that it was therefore ineffectual for any purpose whatsoever.

This Commission, in passing upon the nature and character of any proceeding before it, looks always to the substance and purpose of, and not to the form of such proceeding.

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It clearly appears by the allegations, contents and prayer thereof that the instant application, or so-called complaint, is in reality a supplemental petition by said G. L. Morrison to have this Commission specifically alter and amend Decision No. 15215 in Application No. 11189 as to a certain portion thereof and requests a hearing thereon, and for such other and further relief as may be just and meet.

The mere fact that this proceeding at the time it was filed with the Commission was given, through inadvertence or otherwise, a case or complaint number in no wise affects its real character or purpose.

We are of the opinion, therefore, that the motion of Pickwick Stages System made at the first hearing of the instant proceeding to dismiss the application herein on the ground that the Commission is without jurisdiction to hear it for the reason that it is an indirect and collateral attack upon said Decision No. 15215 is not well taken and the motion will be denied.

Section 5 of the Automobile State and Transportation Act provides in part as follows:

> "The Railroad Commission may at any time for a good cause suspend and upon notice to the grantee of any certificate and opportunity to be heard, revoke, alter and amend any certificate issued under the provisions of this section."

This provision is very broad in its terms and no doubt contemplates that the Commission in the exercise of a sound discretion in any given case where the facts and circumstances justify it, or any good or sufficient cause is shown, may entertain and hear any supplemental petition by an interested or aggrieved party to revoke, alter or amend any certificate, irrespective of whether the decision granting the same has become final or otherwise.

The evidence at the first hearing of this proceeding indicates that G. L. Morrison was clearly denied his desired opportunity to be heard upon his protest to the enlargement of the local operative rights of Pickwick Stages System, at least between Dunsmuir and Weed, and has alleged and shown sufficient facts at the first hearing of this proceeding to entitle him to be heard fully upon the merits of his supplemental petition.

ORDER.

A public hearing having been held in the above entitled proceeding and the Commission now being fully advised in the premises and good cause appearing therefor;

It is hereby ordered, that the motion of Pickwick Stages System for a dismissal of this proceeding be and the same is hereby denied.

It is further ordered, that the number of this proceeding, to wit, Case No. 2267, be and the same is hereby changed to Application No. 11189

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and that all further proceedings upon this petition shall be had and entitled under said Application No. 11189.

It is further ordered, that the above entitled application of G. L. Morrison be and the same is hereby reopened for further hearing and for the taking of evidence upon the merits of his protest to said Application No. 11189 and the question of the alteration or amendment of said Decision No. 15215 therein.

It is hereby further ordered, that a hearing upon said reopened proceeding be had before Examiner Satterwhite at 10 a.m. on Friday, the 2d day of March, 1928, in the city hall at Dunsmuir, California.

Dated at San Francisco, California, this twentieth day of February, 1928.

DECISION No. 19387.

IN THE MATTER OF THE APPLICATION OF ANNA SPUEHLER CONDOS, FOR PERMISSION TO INSTALL A PRIVATE CROSSING OVER THE TRACKS OF THE TIDEWATER AND SOUTHERN RAILWAY COMPANY, A CORPORATION.

Application No. 14257.

Decided February 20, 1928.

CROSSINGS—PRIVATE CROSSING.—A. S. Condos authorized to construct private crossing across the tracks of Tidewater Southern Railway Company near Stockton.

CROSSINGS—PRIVATE CROSSING.—While in general the Commission is of the opinion that where private owners subdivide land holdings which require additional private crossings under section 485*a* of the Civil Code, an attempt should be made to consolidate the use of such crossings between two owners where reasonably possible.

McNoble and Arndt by *Stanley M. Arndt*, for Applicant.
C. W. Dooling, for Tidewater Southern Railway Company.

BY THE COMMISSION.

OPINION.

This is an application on the part of Anna Spuehler Condos, under section 485*a* of the Civil Code, for a private crossing across the tracks of the Tidewater Southern Railway Company at a point about twelve miles southeast of Stockton, in order to have a means of ingress and egress to her land situated on the south side of the railroad in the northwest quarter of section 24, T. 1 S., R. 7 E., M. D. B. and M. and separated from the highway by the railroad right of way.

A public hearing was held at Stockton on January 19, 1927, before Examiner Satterwhite at which time the matter was submitted.

The land owned by Mrs. Condos is situated along the south side of the railroad right of way, which is fifty feet wide and parallel and adjacent to the south side of the French Camp road, between Stockton and Escalon via Atlanta.

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It appears, from the testimony, that the land now owned by Mrs. Condos, consisting of approximately five acres, was held jointly by her first husband and his brother as part of a ten-acre tract; that the house now occupied by Mrs. Condos, her husband and child, was within about three weeks of completion when her first husband died; that upon settlement of the estate, the tract was divided into the two present holdings, and that up until recently the Condos family have not been living on their parcel.

It further appears that the Condos family have been driving across the acreage, owned by the brother of her first husband, to his private crossing, but that he has just lately ploughed his land for sowing and has requested them to stop such use, and they now have no means of ingress and egress, and, therefore, require the use of some other private crossing.

The management of the Tidewater Southern Railway Company admits that applicant has need of a means of ingress and egress to her land, but requests that a roadway be used from her garage, which is on the extreme easterly portion of the property, northwesterly along the front of the property to her west line, where it can be joined to an existing private crossing used by the adjoining landowners, named Moffat.

Mr. Thos. Condos, husband of the applicant, testified that the crossing proposed by the management of the railroad company was not satisfactory as to location in that it took a strip of valuable land across the entire front of the property; was inconvenient; that the use of the proposed roadway would injure crops planted along it, due to road dust settling on the plants; and that applicant desired a direct road immediately in front of the garage.

Testimony by Mr. E. L. Gamble, manager of the Tidewater Southern Railway Company, indicates that the greater the number of private crossings spread out over a short distance of railroad, the greater the general hazard due to the necessity of the motorman being required to devote more attention to watching ahead for automobiles, which might emerge from private property onto the track by one or more of the crossings, and that a concentraction of traffic on fewer crossings was therefore desirable. He admitted that the hazard to the individual crossing the track was no greater at one location than at another, providing all conditions, as to the respective points of crossing, were equal. He estimated that a new crossing at the location requested by applicant would cost $125, and that the widening of the existing private crossing used by the Moffats, would cost about $70. The latter estimate makes no allowance for the strip of land applicant would be required to sacrifice to use this crossing. In addition, it appears that the estimate of $125 for the new crossing is based on approach fills

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entirely of gravel or crushed rock, while generally these approach fills are composed of earth with a driveway of gravel or crushed rock several inches deep on top. This type of crossing would be cheaper than the one estimated by Mr. Gamble. Mr. Gamble estimated the cost of a gravel driveway across the front of the property at about $100, and the value of the land used at about $40. The total cost of the crossing proposed by the railroad would, therefore, be in the neighborhood of $210.

The railroad company operates a total of ten passenger trains daily except Sunday, when four trains are operated over this track. Passenger train speeds vary from 35 to 44 miles per hour. It also operates two freight trains daily for eight months of the year, and from four to six freight trains daily during the four months of the fruit season. Freight train speed is from 15 to 35 miles per hour. There are no trees or other obstructions to the view in the vicinity of either of the crossings under consideration. Grades of approach, on the crossing applied for by applicant, would be somewhat steeper than those on the crossing advocated by the railroad company.

While in general the Commission is of the opinion that in situations where private owners subdivide land holdings which require additional private crossings under section 485*a* of the Civil Code, an attempt should be made to consolidate the use of such crossings between two owners where reasonably possible, it is the opinion of the Commission that in this case the crossing desired by applicant is the one that should be constructed and that the application should be granted.

ORDER.

Anna Spuehler Condos having made application to this Commission for a private crossing across the tracks of Tidewater Southern Railway Company, a public hearing having been had, the Commission being apprised of the facts, the matter being under submission and ready for decision;

It is hereby ordered, that permission be and it is hereby granted to Anna Spuehler Condos to construct a private crossing at grade across the tracks of Tidewater Southern Railway Company near the easterly line of her property in the northwest quarter of section 24, T. 1 S., R. 7 E., at the location shown by the map attached to the application. Said private crossing shall be constructed subject to the following conditions, viz:

(1) The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of that portion of said crossing up to lines two feet outside of the rails shall be borne by applicant. The maintenance of that portion of the crossing between the lines two feet outside of the rails shall be borne by Tidewater Southern Railway Company.

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(2) The crossing shall be constructed of a width not less than sixteen feet and at an angle of ninety degrees to the railroad and with grades of approach not greater than eight per cent; shall be constructed equal or superior to Standard No. 1 as specified in General Order No. 72 of this Commission; shall be protected by private crossing signs and shall in every way be made suitable for the passage thereon of vehicles and other road traffic.

(3) Tidewater Southern Railway Company shall, within thirty days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing.

(4) If said crossing shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this twentieth day of February, 1928.

DECISION NO. 19390.

IN THE MATTER OF THE APPLICATION OF SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA FOR AUTHORITY TO ISSUE AND EXCHANGE FOR ITS OUTSTANDING SEVEN PER CENT PREFERRED STOCK AND/OR SELL TWO MILLION FIVE HUNDRED THOUSAND DOLLARS PAR VALUE OF ITS SIX PER CENT PREFERRED STOCK.

Application No. 14405.

Decided February 20, 1928.

SECURITY ISSUES—STOCK—EXCHANGE.—Southern Counties Gas Company of California authorized to issue $2,500,000 of 6 per cent preferred stock and deliver such stock, or a portion thereof, in exchange to such holders of the $2,500,000 of 7 per cent preferred stock outstanding as desire to make the exchange, and/or sell such stock at not less than par.

LeRoy M. Edwards, for Applicant.

BY THE COMMISSION.

OPINION.

In the above entitled matter Southern Counties Gas Company of California asks the Railroad Commission to make an order authorizing it to issue and exchange and/or sell, upon the basis and for the

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purpose hereinafter set forth, $2,500,000 par value of its 6 per cent preferred stock.

The application shows that Southern Counties Gas Company of California has an authorized capital stock of $25,000,000 divided into 250,000 shares of the par value of $100 each, and consisting of $12,500,000 of common stock, $7,500,000 of 6 per cent cumulative preferred stock, redeemable at $105 a share, and $5,000,000 of 7 per cent cumulative preferred stock, redeemable at $107.50 a share. It appears that at present $3,000,000 of the common stock and $2,500,000 of the 7 per cent preferred stock is outstanding; no 6 per cent preferred stock has ever been issued.

It is now reported that applicant's board of directors at a meeting held December 21, 1927, approved a resolution whereby it was elected to redeem the outstanding $2,500,000 of 7 per cent preferred stock on April 1, 1928, at the price of $107.50 a share, in cash, plus the accrued dividends. It appears, however, that as an alternative to the cash payment for the 7 per cent stock the company proposes to make the following additional offers to the present preferred stockholders, to wit:

Plan A: To issue to such of the holders of its 7 per cent preferred stock as desire to make such exchange, one share of its 6 per cent preferred capital stock, plus $7.50 in cash, for each share of its 7 per cent preferred capital stock so exchanged; or,

Plan B: It will issue to such holders of its 7 per cent preferred stock as desire to make such exchange, its 6 per cent preferred capital stock on the basis of one hundred dollars ($100) per share, in exchange for its 7 per cent preferred capital stock on the basis of one hundred and seven dollars and fifty cents ($107.50) per share. No fractional shares will be issued, but any stockholder exchanging his stock on this last basis (Plan B) will receive the cash equivalent or any fractional interest to which he may become entitled on the basis of one hundred dollars ($100) per share for an entire share of 6 per cent preferred stock.

Applicant accordingly asks permission to exchange its new 6 per cent preferred stock upon the bases indicated and to sell such stock not required for the purposes of exchange at a price to yield it not less than par for the purpose of redeeming and paying the 7 per cent preferred stock.

ORDER.

Southern Counties Gas Company of California having applied to the Railroad Commission for permission to issue $2,500,000 of its 6 per cent cumulative preferred stock, and the Railroad Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the money, property or labor to be procured or paid for by such issue of stock is reasonably required for the purpose specified

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herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that Southern Counties Gas Company of California be and it hereby is authorized to issue $2,500,000 of its 6 per cent preferred stock and deliver such stock, or a portion thereof, in exchange, to such holders of the $2,500,000 of 7 per cent preferred stock now outstanding as may desire to make the exchange, upon the bases set forth in the foregoing opinion, and/or sell such 6 per cent preferred stock at not less than the par value thereof and use the proceeds to redeem the outstanding 7 per cent preferred stock, provided that the entire $2,500,000 of 7 per cent preferred stock now outstanding be redeemed.

It is hereby further ordered, that applicant shall keep such record of the issue, sale and/or exchange of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

It is hereby further ordered, that the authority herein granted shall become effective ten days after the date hereof.

Dated at San Francisco, California, this twentieth day of February, 1928.

DECISION No. 19396.

MOTOR SERVICE EXPRESS; SAN BERNARDINO TRANSPORTATION COMPANY; PACIFIC MOTOR EXPRESS, AND LOS ANGELES AND NEWPORT FREIGHT LINE

vs.

ADAM BAKER, DOING BUSINESS UNDER THE FICTITIOUS NAME OF BELT LINE EXPRESS.

Case No. 2405.

MOTOR SERVICE EXPRESS; SAN BERNARDINO TRANSPORTATION COMPANY; PACIFIC MOTOR EXPRESS, AND LOS ANGELES AND NEWPORT FREIGHT LINE

vs.

S. B. COWAN, DOING BUSINESS UNDER THE FICTITIOUS NAME OF TRIANGLE, ORANGE COUNTY AND SANTA ANA EXPRESS, AND ADAM BAKER, DOING BUSINESS UNDER THE FICTITIOUS NAME OF BELT LINE EXPRESS.

Case No. 2410.

Decided February 26, 1928.

AUTOMOTIVE TRANSPORTATION—PROPORTIONAL RATES.—S. B. Cowan (Triangle, Orange County and Santa Ana Express) and Adam Baker (Belt Line Express) ordered to cancel and withdraw certain proportional rates.

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PLEADING AND PROCEDURE—FORMAL COMPLAINTS—CONTENTS OF COMPLAINT.—A motion to dismiss a complaint on the ground that it was not alleged that the acts done were in violation of law, nor that they were done as common carriers for compensation will be denied where the alleged acts are clearly set forth and the prayer is that defendants be restrained from continuing such operations.

WORDS AND PHRASES—"PROPORTIONAL RATE."—By proportional rates is meant those which differ from the corresponding local rates and which apply only to traffic destined to or brought from a point on the line of a connecting carrier. When connecting carriers fail to make arrangements for joint rates, it has been the practice for one carrier alone to publish so-called proportional rates.

WORDS AND PHRASES—"JOINT RATES."—A joint rate is one applicable to shipments from a point located on the line of one carrier to a point on the line of another, made by agreement between the carriers and published in a single tariff under proper concurrences of all lines over which the rates apply.

RATES—AUTOMOTIVE TRANSPORTATION—JOINT OR PROPORTIONAL RATES.—Proportional and joint rates are subject to regulation under the general power of the state to regulate common carriers. Section 33 of the Public Utilities Act refers to joint rates, but this section has no application to carriers by motor truck nor is there any provision in reference thereto in the Auto Stage and Truck Transportation Act.

RATES—AUTOMOTIVE TRANSPORTATION—JOINT OR PROPORTIONAL RATES.—Because of essential differences between rail and motor truck transportation, the Commission must adopt different principles in regulating the operations of the two classes of carriers. Motor carriers should be definitely limited in the field of their operations and not permitted to deviate from their prescribed routes nor enlarge operative rights without obtaining a certificate. Filing of joint rates by owners of distinct operative rights is to an extent an establishment of a through service, a linking-up of the two lines, and to that extent amounts to an enlargement of the two operative rights for which a certificate must be obtained. (*Western Transport Co.*, 20 C. R. C. 1038; *Blair* vs. *Coast Truck Line*, 21 C. R. C. 530; *San Jose Transportation Co.*, 24 C. R. C. 660; *Highway Transport Co.*, 26 C. R. C. 942.)

AUTOMOTIVE TRANSPORTATION—THROUGH SERVICE—PROPORTIONAL RATES.—The concurrent filing of proportional rates, together with other evidences of close relationship between the two automotive truck carriers, was held to support the allegation that such rates were published for the exclusive purpose of establishing a through service. The Commission does not mean to hold that the filing of proportional rates by a single carrier in a proper case shall, of itself, constitute an expansion of operative rights and that it is required to obtain a certificate, but each case must be decided upon its merits.

WORDS AND PHRASES—"CONSOLIDATED PACKAGE."—A mere grouping of a quantity of packages in a trailer does not constitute a consolidated package so as to entitle the parcels to a bulk or consolidated package rate.

RATES—AUTOMOTIVE TRANSPORTATION.—Consolidated package rates are entirely distinct from ordinary class rates, and must be specifically provided for in a carrier's tariffs.

AUTOMOTIVE TRANSPORTATION—LEASE OF EQUIPMENT.—General Order No. 67, in respect to leasing of equipment, makes no distinction between vehicles operating under their own motive power and others (trailers), and clearly requires the filing of a lease when any vehicle used for transporting freight is operated by a carrier other than the owner.

H. J. Bischoff, for Plaintiffs.
Richard T. Eddy, for Defendants.

BY THE COMMISSION.

OPINION.

A public hearing on the above entitled cases was held by Examiner Gannon in the city of Los Angeles October 27th and 28th. The two were consolidated for hearing since they related to the same matter. The San Bernardino Transportation Company withdrew as a party plaintiff prior to the hearing.

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The defendants have moved that the complaints be dismissed on the ground that nowhere in the complaints was it alleged that the acts done were in violation of law, nor that they were done as common carriers for compensation. The motion is denied. The alleged acts are clearly set forth and the complainants pray therein that the defendants be restrained from continuing such operations. The defendants could not have been misled thereby or have been unable to prepare their defense.

Defendant Cowan operates a motor truck line under the name of the Triangle, Orange County and Santa Ana Express from Los Angeles southward to Anaheim and Santa Ana. Defendant Baker operates the Belt Line Express from Balboa Beach northeastward through Anaheim and Santa Ana and on to Riverside, San Bernardino and Redlands on the east.

The main issue is whether the defendants have been operating their business in such a manner as to constitute an illegal expansion of the operative rights granted to them by this Commission. The complainants, in substance, allege that the defendants have, by agreement, published proportional rates and otherwise maintained such a close relationship in the operation of their respective lines that they have virtually established a through service. Defendants admit that they have filed such proportional rates and insist that they have a right to fix such rates at will. It will be necessary, therefore, to consider the meaning and purpose of proportional rates and under what right motor carriers may incorporate them in their tariffs.

By proportional rates is meant those which differ from the corresponding local rates and which apply only to traffic which is destined to or is brought from a point on the line of a connecting carrier. They are not the same as joint rates. A joint rate is one applicable to shipments from a point located on the line of one carrier to a point on the line of another, made by agreement between the carriers and published in a single tariff under proper concurrences of all lines over which the rates apply. When the connecting carriers for some reason fail to make arrangements for the establishment of joint rates, it has been the practice for one carrier alone to publish so-called proportional rates on shipments received or delivered to connecting carriers at a designated point. Both joint rates and proportional rates are in nearly every case less than the aggregate of corresponding local rates, and are permitted to be so on the theory that a longer haul is entitled to a relatively lower rate per mile than a shorter haul. The fact that such rates are in many cases established for the purpose of meeting competition does not of itself make them illegal.

There may not be any inherent vice in the establishment by carriers of either proportional or joint rates. They are, however, subject to

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regulation under the general power of the state to regulate common carriers. Section 33 of the Public Utilities Act of California refers to joint rates, but this section has no application to carriers by motor truck, nor is there any provision in reference thereto in the Auto Stage and Truck Transportation Act. Though there have been a number of cases before the Commission involving the right of motor carriers to establish joint rates, the instant case is the first apparently in which the question of proportional rates has been presented.

A line of decisions by this Commission beginning with *Western Transport Company*, Decision No. 9892 (20 C. R. C. 1038), and followed by *Blair* vs. *Coast Truck Line*, Decision No. 10338 (21 C. R. C. 530), *Oakland, San Jose Transportation Company*, Decision No. 13321 (24 C. R. C. 660), and *Highway Transport Company*, Decision No. 15328 (26 C. R. C. 942), lay down very clearly the rule in respect to the establishment by motor carriers of joint rates. From a study of these decisions we can lay down these conclusions; that because of essential differences between rail and motor truck transportation, this Commission must of necessity adopt different principles in regulating the operations of the two classes of carriers; that motor carriers should be definitely limited in the field of their operations and not permitted to deviate from their prescribed routes nor in any other way enlarge the operative rights granted to them without first obtaining a certificate from this Commission that the public convenience and necessity so require; that the filing of joint rates by the owners of distinct operative rights is to an extent an establishment of a through service, a linking up of the two lines, and to that extent amounts to an enlargement of the two operative rights for which a certificate must be obtained.

The charge of the complainants herein is that the defendants have published proportional rates without first obtaining authority from this Commission, and the complainants argue that proportional rates, like joint rates, are to be condemned because they effect an unauthorized expansion of authorized operative rights. We need not further examine the technical differences between the two, nor determine whether the establishment of proportional rates without a certificate shall in every case be prohibited. As we have seen, the jurisdiction of this Commission to regulate such matters rests in its general power to regulate rates and to determine generally the route and limit of the operative right granted to each motor truck carrier. And, as we have seen also, the prohibition of joint rates must be upon the ground that they result in an enlargement of the motor carrier's operations. So in this case, we have to decide only whether the defendants have, by the filing of such proportional tariffs and other acts, sought indirectly to enlarge their operations beyond the limit fixed in their certificates.

As stated, proportional rates are filed by a single carrier when it is

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impracticable for the connecting carriers to join in the establishment of joint rates, or when they refuse to do so. The proportional rates in question were incorporated in tariffs filed concurrently by defendants in September, 1926. Neither tariff specifically named the connecting carrier or carriers, but each provided that the proportional rates were available only when shipments were delivered from or to franchise motor carriers at Santa Ana or Anaheim. We must infer that such tariffs were filed by the two defendants under some agreement. Certainly, since they separately filed such rates, it can not be contended by either defendant that the other had refused to enter into a joint rate agreement. However that may be, the result obtained by them in the mutual establishment of proportional rates, as we shall see, was substantially the same as that which would have resulted from the publication of a joint rate.

It is true that some carriers other than the defendants themselves may have participated to a slight extent in the business available under such proportional rates, but the fact remains that practically all of the through movements of freight were routed by one defendant over the line of the other. This is shown by the freight bills of a typical day's business. Defendant Baker admitted that he could not make his proportional rates effective until the Triangle Express Company also established similar rates, for the bulk of the new business was to come from Los Angeles. The combined proportional rates were fixed at about 60 per cent of the combined local rates on shipments from Los Angeles to Riverside and nearby points, and are about equal to the local rates of other carriers, that is, the complainants' lines, which operate over the more direct route between the two cities.

The defendants have not attempted to justify such reductions in their rates on the theory that the charge for a longer haul should be relatively less per mile than for a shorter haul. They explain rather that they were considered to be more in the nature of commodity rates. This brings us to the consideration of the other alleged practices of defendants in respect to their freight tariffs and the manner in which freight has been handled by them.

The evidence shows that a large part of the freight moving over the Triangle Express and Belt Line Express from Los Angeles to Riverside and nearby points is shipped by the Inter-City Parcel Service, a company operating a pick-up and forwarding service for parcels within the city of Los Angeles. The Inter-City Company presents a quantity of parcels to the Triangle Express at the Depot of the latter in Los Angeles, consigned to Riverside, San Bernardino and other points on the Belt Line. Now, though the Inter-City Company has apparently collected full transportation charges in advance from the consignors of the various parcels, it does not at once tender to the Triangle

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Express the freight charge for either the Triangle haul or the Belt Line haul. Nor is the usual system followed by the Triangle Express nor the Belt Line in billing the shipper, the Inter-City Parcel Service. Apparently all daily records are kept in the office of the Inter-City Company and the only records kept by the defendant carriers are the copies of the Inter-City Company's delivery sheets. These show the names of consignor and consignee of each parcel and the weights, listed on several sheets, one or more for Riverside, San Bernardino and each of the other eastern points on the Belt Line. Once each month some sort of an accounting is had between the Inter-City Parcel Company and the Belt Line Express, but it is apparent that neither of these carriers make out proper bills of lading or render proper freight bills to either consignor or consignee.

We shall consider first the evidence in respect to the charges made by the Belt Line against the Inter-City Company for the transportation of parcels. It should be noted that this business all comes to the Belt Line from the Triangle Express by way of Santa Ana or Anaheim destined to Riverside and other points where the parcels are delivered by the Belt Line trucks to the ultimate consignees. Mr. Baker of the Belt Line testified that he now receives from the Inter-City Company for this service 8 cents per parcel (up to 16 pounds) plus three-fourths of a cent per pound; for parcels weighing from 16 to 50 pounds, 35 cents. Prior to August, 1927, his charge for smaller parcels was 9 cents per parcel, plus 1 cent per pound. Mr. Tobias, auditor for the Inter-City Parcel Company, testified that he had knowledge of the amounts allowed to the Belt Line for such service and of the records kept by his company and, testifying from his records, he stated that during the month of August the Belt Line carried for them a total of 4069 parcels having a total weight of 52,897 pounds. The amount credited to the Belt Line for these shipments was $773, of which $459.79 had been paid on account. Miss McCleary, also an employee of the Inter-City Parcel Company, testified also that the sum of $773 was the credit allowed to the Belt Line for the August business, but that she had no knowledge of what amount had actually been paid. She herself extended the credits on the delivery records opposite the weights given for each parcel shipped.

A careful analysis of these credits does not reveal that the amounts allowed by the Inter-City Company to the Belt Line were in violation of the Belt Line's tariffs for this class of business, or that the total credit of $773 is incorrect. However, there was no explanation of the testimony that only $459.75 of this amount had actually been paid, or of the unprecedented system of bookkeeping on the part of the Belt Line which permitted this shipper to keep all the records, estimate the

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weights and charges, and to render to the carrier merely a monthly statement of the credits allowed.

Some explanation of the lack of bookkeeping method on the part of the Belt Line may be found in the admission of Mr. Cowan of the Triangle Express that he is an owner in the Inter-City Parcel Service. Now, what is the system of the Triangle Express in handling this same class of business from the Inter-City Company for transportation from Los Angeles to the Belt Line at Santa Ana? The evidence shows that the Triangle Express, too, keeps no records and makes no bills, except a monthly statement made up from the same delivery sheets compiled by the Inter-City Parcel Company. Defendant Cowan testified that he had access to the delivery record sheets in the files of the Inter-City Company, which sheets were entered in evidence as Exhibit No. 1. Mr. Cowan offered in evidence a freight bill purporting to be the bill of the Triangle Express to the Inter-City Company for parcels carried during the month of July, apparently a statement compiled from the same Inter-City delivery records for that month. The auditor of the Inter-City Company testified that this was similar to other monthly statements, but he did no know wheher it or similar bills for subsequent months had yet been paid. There can be but one conclusion from this testimony. The Triangle Express, as well as the Belt Line Express, by their failure to make out proper bills of lading and by their failure to insist upon prompt settlement of accounts with the Inter-City Company, have accorded a preference in favor of this particular shipper, and the manner in which they each have handled this business indicates the existence of some agreement between them to conduct their operations in violation of law.

The charges made by the Triangle Express for hauling the parcels of the Inter-City Company or, more correctly, the credits allowed by the Inter-City Company to the Triangle Express for such service, are admittedly at the rate of 22½ cents per 100 pounds. This is the first-class propotional rate as given in the Triangle Express tariffs. Defendant Cowan claims that because various parcels consigned by the Inter-City Company are grouped together and hauled in a trailer apart from other freight to Santa Ana and Anaheim they are entitled to a bulk or consolidated package rate. The first answer to this claim is that a mere grouping of a quantity of packages in a trailer does not constitute a consolidated package; and second, the Triangle Express has no such consolidated package rate schedule in its tariffs on file. Consolidated package rates are entirely distinct from ordinary class rates and must be specifically provided for in carrier's tariffs.

This brings us to the matter of the operation of the motor equipment of the Triangle Express over the route of the Belt Line which the complainants allege is such as to constitute a through service. There is a

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conflict in evidence as to the operation of trucks over the through route, but defendant Cowan admits that his trailer in which the Inter-City consignments are hauled is taken straight through from Los Angeles to Riverside behind a Triangle truck from Los Angeles to Santa Ana and behind a Belt Line truck from Santa Ana to Riverside. Though this trip is made daily, no lease for the use of such trailer by the Belt Line has been filed with the Commission. General Order No. 67, in respect to the leasing of equipment makes no distinction between vehicles operating under their own motive power and others, and clearly requires the filing of a lease when any vehicle used for transporting freight is operated by a carrier other than the owner. Moreover, though the evidence offered by the complainants to show that the Triangle Express trucks operated over the Belt Line was not conclusive, it was shown that the two defendants have been so ready to extend favors one to the other that we may consider it at least additional evidence of their concerted plan to do indirectly what they are prohibited to do by law..

Other evidence of the close cooperation between the defendant carriers is found in their advertising and solicitation of business. At Riverside the defendant Baker secured signatures of shippers to a printed agreement instructing him to route all shipments to Los Angeles over the Belt Line Express and the Triangle Express, while at the depot in Los Angeles occupied in part by the Triangle Express there is displayed a large sign indicating that it is a depot also of the Belt Line Express.

From the foregoing we have reached the conclusion that the defendants have illegally attempted to expand their respective operative rights. The concurrent filing of proportional rates, together with the other evidence of close relationship between the two carriers, supports complainants' allegation that such rates were published for the exclusive purpose of establishing, and that defendants have in fact established, a through service. We do not mean to hold that the filing of proportional rates by a single carrier in a proper case shall of itself constitute an expansion of such carrier's operative right and that it is required to first obtain a certificate from this Commission. Each case must be decided on its merits. We may say, however, that there is no justification for the publication of proportional rates by these two connecting carriers. Any object sought to be attained thereby may be and should be attained through a joint application to this Commission to establish a joint rate.

The complainants' allegation that the Triangle Express has charged the Inter-City Parcel Company a rate not contained in its published tariffs raises the whole question of discrimination in favor of that shipper. Such discrimination was clearly shown.

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Accordingly, the following order should be issued:

ORDER.

A public hearing having been held on the above entitled proceeding, the matter having been submitted on briefs, the Commission being duly advised;

It is hereby ordered, that the proportional rates published by S. B. Cowan, doing business under the fictitious name of Triangle, Orange County and Santa Ana Express, and Adam Baker doing business under the fictitious name of Belt Line Express, be canceled and withdrawn by appropriate tariff publication and that said S. B. Cowan and Adam Baker within twenty days file with this Commission revised tariffs in accordance with this order, and

It is hereby further ordered, that said S. B. Cowan and said Adam Baker quote and apply only such rates as are legally published and filed by them with this Commission and that they immediately cease and desist charging any shipper a consolidated package rate without having first filed with this Commission tariffs specifically setting forth consolidated package rates and the conditions under which such consolidated packages are accepted for transportation.

It is hereby further ordered, that the said Adam Baker immediately cease and desist from the operation of any trucks, trailers or other transportation equipment not owned by him over the route or any portion of the route of the Belt Line Express without first filing with this Commission a lease therefor, as provided by General Order No. 67.

Dated at San Francisco, California, this twenty-first day of February, 1928.

DECISION No. 19397.

CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION,

vs.

GREAT WESTERN POWER COMPANY OF CALIFORNIA, A CORPORATION.

Case No. 2143.

CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION.

Case No. 2144.

CITY OF OAKLAND, A MUNICIPAL CORPORATION,

vs.

GREAT WESTERN POWER COMPANY OF CALIFORNIA.

Case No. 2153.

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CITY OF OAKLAND, A MUNICIPAL CORPORATION,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION.

Case No. 2154.

CITY OF BERKELEY, A MUNICIPAL CORPORATION,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION.

Case No. 2189.

CITY OF BERKELEY, A MUNICIPAL CORPORATION,

vs.

GREAT WESTERN POWER COMPANY OF CALIFORNIA.

Case No. 2190.

CITY OF PIEDMONT, A MUNICIPAL CORPORATION,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION.

Case No. 2200.

CITY OF PIEDMONT, A MUNICIPAL CORPORATION,

vs.

GREAT WESTERN POWER COMPANY OF CALIFORNIA.

Case No. 2201.

IN THE MATTER OF AN INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE REASONABLENESS OF THE RATES AND CHARGES OF THE PACIFIC GAS AND ELECTRIC COMPANY FOR ELECTRICAL SERVICE.

Case No. 2225.

IN THE MATTER OF AN INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE RATES AND CHARGES OF GREAT WESTERN POWER COMPANY OF CALIFORNIA, FOR ELECTRICITY.

Case No. 2235.

Decided February 23, 1928.

RATES—ELECTRIC UTILITIES—REDUCTIONS.—Electric light and power rates of Pacific Gas and Electric Company and Great Western Power Company ordered reduced.

John J. Dailey, for the City and County of San Francisco.
John J. O'Toole, for the City and County of San Francisco.
Leon E. Gray, for the City of Oakland.
C. P. Cutten, for Pacific Gas and Electric Company.
Guy C. Earl and *Chaffee E. Hall*, by *Chaffee E. Hall*, for the Great Western Power Company.
J. J. Deuel and *L. S. Wing*, by *L. S. Wing*, for California Farm Bureau Federation.

SEAVEY, *Commissioner*.

OPINION.

At a public hearing on January 17, 1928, in the above entitled proceedings, the defendant electric companies announced their willing-

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ness to make voluntary reductions in certain of their schedules. After a continuance of about a month the defendant companies have presented revised schedules at a public hearing on February 21, 1928.

The principal effect of the proposed changes in schedule is a material reduction in the rates to domestic and residential consumers, particularly in the portions of the schedules affecting the cost of operation of electrical appliances and household devices. The reason advanced for such a reduction is twofold: The present reduction is largely made possible by the growth of this class of consumption, and the desirability of encouraging still further growth by reduction in rate.

In addition to these more important benefits the proposed changes will result in a reduction in rates to substantially all lighting consumers, and also in minor increases of a few cents per month in the bills of a limited number of consumers. On the whole, the proposed change represents a saving to consumers of nearly $2,000,000 per year.

At the hearing at which the schedules were presented, no objection was voiced to the introduction of the proposed schedules themselves. Representatives of the cities objected to a final dismissal of the complaints on the ground that, while the proposed reduction was very acceptable, no showing had been made that it was sufficient.

Representatives of the Farm Bureau proposed a new rate for agricultural pumping service which eliminates optional rates now in effect, opens the schedule to new types of service and effects a general reduction in rate, though a few consumers might find their bills slightly increased as a result of the elimination of the option.

There is included in the order accompanying this opinion a new schedule which eliminates the present option and provides a new rate structure which slightly increases a few consumers and reduces to some extent the rates of the majority of agricultural power users. This change offers many advantages over the present system of optional rates and is all that is justified by the evidence so far before the Commission.

Presentation of evidence in these proceedings has not progressed to the point where the Commission may determine whether the proposed reduction is all that should be made, or whether groups of consumers not affected by the proposed changes have been fairly dealt with. We have the opportunity, however, of giving immediate assent to a change in rates that injures no one, but benefits a large group of consumers to the extent of over $150,000 a month. The present proceedings should be continued to determine the questions that have been raised, but, in the meantime, and subject to any changes that may later be found desirable, the proposed rates should become effective with the least possible delay.

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I recommend the following form of order:

ORDER.

Pacific Gas and Electric Company and Great Western Power Company of California having applied to the Railroad Commission for authority to make effective certain schedules, and the Railroad Commission being of the opinion that such authority should be given, subject to certain provisions, and that the above entitled matters should be continued for further hearing and final decision;

It is hereby ordered, that

1. Effective with bills based on regular monthly meter readings taken on and after March 1, 1928, Pacific Gas and Electric Company and Great Western Power Company of California may charge and collect for electric service in accordance with the schedules of rates set forth in Exhibit "A" attached hereto and made a part hereof.

2. Effective with bills based on regular monthly meter readings taken on and after April 1, 1928, Pacific Gas and Electric Company and Great Western Power Company of California may charge and collect for electric service in accordance with the schedules of rates set forth in Exhibit "B" attached hereto and made a part hereof.

3. Nothing in this order shall be taken as a finding by this Commission that these schedules or rates, or any of them, are just and reasonable, or that no other changes should be made in the existing schedules of electric rates of Pacific Gas and Electric Company and Great Western Power Company of California.

4. The above entitled proceedings shall remain open for further hearing and such further order or orders as may seem proper.

For all other purposes the effective date of this order shall be March 15, 1928.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-third day of February, 1928.

EXHIBIT "A."

SCHEDULE L-1.

(Canceling Schedule L-1 now in effect.)

General Lighting Service.

Applicable to general domestic and commercial lighting service, including household appliances and small power service.

Territory.

Applicable to service within the incorporated limits of San Francisco, Oakland, Berkeley, Piedmont, Emeryville, San Leandro and Albany.

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Rate.

Service charge per meter per month			40¢
Energy charge (to be added to service charge).			
First	200 k.w.h. per meter per month	5 ¢	per k.w.h.
Next	800 k.w.h. per meter per month	4 ¢	per k.w.h.
Next	2000 k.w.h. per meter per month	3 ¢	per k.w.h.
All over	3000 k.w.h. per meter per month	2½¢	per k.w.h.

Minimum Charge.

The service charge set forth above constitutes the minimum charge for no consumption of energy.

Special Conditions.

(a) Single phase motors of an aggregate capacity of 5 horsepower or less may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter. The minimum charge applicable to this combination service shall be the same as that set forth above.

(b) In San Francisco only, motors of an aggregate capacity in excess of 5 horsepower may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter, in which case the total minimum charge will be 90 cents per horsepower per month of motor load connected. Combination will not be made between A.C. and D.C. service. Single phase and polyphase will not be combined unless obtainable from the same service wires.

(c) The company has the option of refusing D.C. service where both A.C. and D.C. are available.

SHEDULE L-2.

(Canceling Schedule L-2 now in effect.)

General Lighting Service.

Applicable to general domestic and commercial lighting service, including household appliances and small power service.

Territory.

Applicable to service within all incorporated limits served by the company, except San Francisco, Oakland, Berkeley, Piedmont, Emeryville, San Leandro and Albany.

Rate.

Service charge per meter per month			50¢
Energy charge (to be added to service charge).			
First	200 k.w.h. per meter per month	5 ¢	per k.w.h.
Next	800 k.w.h. per meter per month	4 ¢	per k.w.h.
Next	2000 k.w.h. per meter per month	3 ¢	per k.w.h.
All over	3000 k.w.h. per meter per month	2½¢	per k.w.h.

Minimum Charge.

The service charge set forth above constitutes the minimum charge for no consumption of energy.

Special Conditions.

Single phase motors of an aggregate capacity of 5 horsepower or less may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter. The minimum charge applicable to this combination service shall be the same as that set forth above.

SCHEDULE L-3.

Canceling Schedule L-3 now in effect.)

General Lighting Service.

Applicable to general domestic and commercial lighting service, including household appliances and small power service.

Territory.

Applicable to service in entire territory served, outside of incorporated limits.

Rate.

Service charge per meter per month			70¢
Energy charge (to be added to service charge).			
First	200 k.w.h. per meter per month	6 ¢	per k.w.h.
Next	800 k.w.h. per meter per month	5 ¢	per k.w.h.
Next	2000 k.w.h. per meter per month	4 ¢	per k.w.h.
All over	3000 k.w.h. per meter per month	3½¢	per k.w.h.

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Minimum Charge.

The service charge set forth above constitutes the minimum charge for no consumption of energy.

Special Conditions.

Single phase motor loads of an aggregate capacity of 5 horsepower or less may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter. The minimum charge applicable to this combination service shall be the same as that set forth above.

EXHIBIT "B."

SCHEDULE D-1.

(Canceling Schedule C-2 now in effect.)

General Domestic Combination Service.

Available, upon application, for domestic lighting in combination with heating, cooking or domestic power service (including lamp socket appliances).

Territory.

Applicable to service within the incorporated limits of San Francisco, Oakland, Berkeley, Piedmont, Emeryville, San Leandro and Albany.

Rate.

Service charge, per meter per month		40¢
Energy charge (to be added to service charge).		
First	30 k.w.h. per month*	5 ¢ per k.w.h.
Next	140 k.w.h. per month	3.5¢ per k.w.h.
All excess	k.w.h. per month	1.5¢ per k.w.h.

* For residences, flats, or individual apartments of more than six rooms, 5 k.w.h. for each additional room will be added to the first block of 30 k.w.h.

Minimum Charge.

(a) Where no major equipment is installed, the minimum charge is the service charge.

(b) Where major equipment is installed, the minimum charge will be the service charge plus 40 cents per month for each k.w. of major equipment in excess of 2 k.w.

NOTE.—"Major equipment" includes any device having capacity in excess of 1 k.w.

(c) Upon written application by the consumer, the company will put the minimum charge on an annual basis of $36 per annum for the first 7 k.w. of major equipment plus $6 per annum for each additional kilowatt of such major equipment, provided the primary use of service is seasonal and further provided the consumer signs a contract for service for a period of not less than one (1) year. The company reserves the right to bill the annual minimum charge proportionately throughout the year.

Special Conditions.

(a) This schedule applies only to single family dwellings and to separately metered flats and apartments where the consumer uses cooking or heating or domestic power appliances (including lamp socket devices) of at least 1 k.w. aggregate capacity.

(b) Any apartment house or group of apartments may receive service under this schedule through one meter, provided that each individual apartment included has permanently installed heating or cooking equipment of at least 2 k.w. capacity. For this purpose, the first energy block only will be increased and will be made equal to the sum of the first energy blocks separately calculated for the individual apartment included. The rate of 5 cents per k.w.h. will be applied to the kilowatt-hours thus determined in the same manner as if they were the consumption of an individual service separately metered.

(c) Capacity of all equipment will be based on name plate rating, all equipment assumed as operating at 100 per cent power factor, and a rating in horsepower being converted to kilowatts at one to one.

(d) Single phase power service (5 horsepower or less) may be combined under this schedule.

(e) For the purpose of this schedule the number of rooms will be determined upon the customary real estate basis of rating. The tables following are illustrative of rooms to be counted and not to be counted.

[a] *To be counted*		*Not to be counted*	
Ballroom	Library	Alcove	Hallways
Billiard room	Living room	Attic (unfinished)	Laundry
Bedroom	Music room	Bathroom	Pantry
Conservatory	Nursery	[b] Barn (without living quarters)	Piazza
Den	Observatory		Porch
Dining room	Office	Breakfast nook	Portico
Drawing room	Parlor	Butler's pantry	Reception room (100 sq. ft. or less)
Dressing room	Reception room	Cellar	
Gymnasium	Servant's room	Closet	Sleeping porch
Kitchen	Studio	[b] Coal shed	Storage room
Kitchenette	Serving room	Dressing closet	Toilet
		[b] Garage (without living quarters)	

[a] Rooms listed are to be counted whether they are wired or not.

[b] Each 200 watts connected load of yard, barn or other outhouse lighting will be counted as one room. Empty lamp sockets will be rated at 50 watts.

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SCHEDULE D–2.

(Canceling Schedule C–2 now in effect.)

General Domestic Combination Service.

Available, upon application, for domestic lighting in combination with heating, cooking or domestic power service (including lamp socket appliances).

Territory.

Applicable within incorporated limits served by the company, except San Francisco, Oakland, Berkeley, Piedmont, Emeryville, San Leandro and Albany.

Rate.

Service charge, per meter per month		50¢
Energy charge (to be added to service charge).		
First 30 k.w.h. per month*		5 ¢ per k.w.h.
Next 140 k.w.h. per month		3.5¢ per k.w.h.
All excess k.w.h. per month		1.5¢ per k.w.h.

*For residences, flats, or individual apartments of more than six rooms, 5 k.w.h. for each additional room will be added to the first block of 30 k.w.h.

Minimum Charge.

(a) Where no major equipment is installed, the minimum charge is the service charge.

(b) Where major equipment is installed, the minimum charge will be the service charge plus 40 cents per month for each k.w. of major equipment in excess of 2 k.w.

NOTE.—"Major equipment" includes any device having capacity in excess of 1 k.w.

(c) Upon written application by the consumer, the company will put the minimum charge on an annual basis of $36 per annum for the first 7 k.w. of major equipment plus $6 per annum for each additional kilowatt of such major equipment, provided the primary use of service is seasonal and further provided the consumer signs a contract for service for a period of not less than one (1) year. The company reserves the right to bill the annual minimum charge proportionately throughout the year.

Special Conditions.

(a) This schedule applies only to single family dwellings and to separately metered flats and apartments where the consumer uses cooking or heating or domestic power appliances (including lamp socket devices) of at least 1 k.w. aggregate capacity.

(b) Any apartment house or group of apartments may receive service under this schedule through one meter, provided that each individual apartment included has permanently installed heating or cooking equipment of at least 2 k.w. capacity. For this purpose, the first energy block only will be increased and will be made equal to the sum of the first energy blocks separately calculated for the individual apartment included. The rate of 5 cents per k.w.h. will be applied to the kilowatt-hours thus determined in the same manner as if they were the consumption of an individual service separately metered.

(c) Capacity of all equipment will be based on name plate rating, all equipment assumed as operating at 100 per cent power factor, and a rating in horsepower being converted to kilowatts at one to one.

(d) Single phase power service (5 horsepower or less) may be combined under this schedule.

(e) For the purpose of this schedule the number of rooms will be determined upon the customary real estate basis of rating. The tables following are illustrative of rooms to be counted and not to be counted.

To be counted		*Not to be counted*	
Ballroom	Library	Alcove	Hallways
Billiard room	Living room	Attic (unfinished)	Laundry
Bedroom	Music room	Bathroom	Pantry
Conservatory	Nursery	[b] Barn (without living quarters)	Piazza
Den	Observatory	Breakfast nook	Porch
Dining room	Office	Butler's pantry	Portico
Drawing room	Parlor	Cellar	Reception room (100 sq. ft. or less)
Dressing room	Reception room	Closet	Sleeping porch
Gymnasium	Servant's room	[b] Coal shed	Storage room
Kitchen	Studio	Dressing closet	Toilet
Kitchenette	Serving room	[b] Garage (without living quarters)	

[a] Rooms listed are to be counted whether they are wired or not.

[b] Each 200 watts connected load of yard, barn or other outhouse lighting will be counted as one room. Empty lamp sockets will be rated at 50 watts.

SCHEDULE D–3.

(Canceling Schedule C–2 now in effect.)

General Domestic Combination Service.

Available, upon application, for domestic lighting in combination with heating, cooking or domestic power service (including lamp socket appplianes).

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Territory.

Applicable in all unincorporated territory served by the company.

Rate.

Service charge, per meter per month	70¢
Energy charge (to be added to service charge).	
First 30 k.w.h. per month*	6 ¢ per k.w.h.
Next 140 k.w.h. per month	3.5¢ per k.w.h.
All excess k.w.h. per month	1.5¢ per k.w.h.

*For residences, flats, or indivdiual appartments of more than six rooms, 5 k.w.h. for each additional room will be added to the first block of 30 k.w.h.

Minimum Charge.

(a) Where no major equipment is installed, the minimum charge is the service charge.

(b) Where major equipment is installed, the minimum charge will be the service charge plus 40 cents per month for each k.w. of major equipment in excess of 2 k.w.

NOTE.—"Major equipment" includes any device having capacity in excess of 1 k.w.

(c) Upon written application by the consumer, the company will put the minimum charge on an annual basis of $36 per annum for the first 7 k.w. of major equipment plus $6 per annum for each additional kilowatt of such major equipment, provided the primary use of service is seasonal and further provided the consumer signs a contract for service for a period of not less than one (1) year. The company reserves the right to bill the annual minimum charge proportionately throughout the year.

Special Conditions.

(a) This schedule applies only to single family dwellings and to separately metered flats and apartments where the consumer uses cooking or heating or domestic power appliances (including lamp socket devices) of at least 1 k.w. aggregate capacity.

(b) Any apartment house or group of apartments may receive service under this schedule through one meter, provided that each individual apartment included has permanently installed heating or cooking equipment of at least 2 k.w. capacity. For this purpose, the first energy block only will be increased and will be made equal to the sum of the first energy blocks separately calculated for the individual apartment included. The rate of 6 cents per k.w.h. will be applied to the kilowatt-hours thus determined in the same manner as if they were the consumption of an individual service separately metered.

(c) Capacity of all equipment will be based on name plate rating, all equipment assumed as operating at 100 per cent power factor, and a rating in horsepower being converted to kilowatts at one to one.

(d) Single phase power service (5 horsepower or less) may be combined under this schedule.

(e) For the purpose of this schedule the number of rooms will be determined upon the customary real estate basis of rating. The tables following are illustrative of rooms to be counted and not to be counted.

[a] *To be counted*		*Not to be counted*	
Ballroom	Library	Alcove	Hallways
Billiard room	Living room	Attic (unfinished)	Laundry
Bedroom	Music room	Bathroom	Pantry
Conservatory	Nursery	[b] Barn (without living quarters)	Piazza
Den	Observatory	Breakfast nook	Porch
Dining room	Office	Butler's pantry	Portico
Drawing room	Parlor	Cellar	Reception room (100 sq. ft. or less)
Dressing room	Reception room	Closet	Sleeping porch
Gymnasium	Servant's room	[b] Coal shed	Storage room
Kitchen	Studio	Dressing closet	Toilet
Kitchenette	Serving room	[b] Garage (without living quarters)	

[a] Rooms listed are to be counted whether they are wired or not.

[b] Each 200 watts connected load of yard, barn or other outhouse lighting will be counted as one room. Empty lamp sockets will be rated at 50 watts.

SCHEDULE P–3.

(Canceling Schedule P–3 now in effect.)

Agricultural Power Service.

Applicable to general agricultural and reclamation service, including pumping, feed choppers, milking machines, heating for incubators, brooders, poultry house lighting and general farm use, but excluding cooking and general lighting service.

Territory.

Entire territory served.

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Rate.

Size of installation—horsepower	*Annual service charge per h.p.*	*Energy charge in addition to the service charge. Rate per k.w.h. for consumption per horsepower per year of First 1000 k.w.h. cents*	*Next 1000 k.w.h. cents*	*Next 1000 k.w.h. cents*	*All over 3000 k.w.h. cents*
2–4	$6.50*	1.6	1.2	0.9	0.7
5–14	5.50	1.4	1.1	.8	.7
15–40	5.00	1.2	1.0	.8	.7
50–99	4.50	1.1	.9	.75	.7
100–249	3.90	1.1	.9	.75	.7
250–499	3.75	1.05	.85	.75	.7
500–999	3.60	1.0	.85	.75	.7
1000–2499	3.30	1.0	.85	.75	.7
2500 h.p. and over	3.00	1.0	.85	.75	.7

*In no case will the total annual service charge be less than $13.00 for single phase service, nor less than $19.50 for three phase service.

Special Conditions.

(a) Agricultural year.

Meters on all agricultural services will be read by the company between April 1st and April 10th of each year and the above rates will apply to the yearly periods between such successive readings.

(b) Payment of service charges.

Service charges will be payable in six equal monthly installments beginning with the bill based on the regular May meter reading.

(c) Guaranteeing rates for larger size installation.

Any consumer may obtain the rate for a larger installation by guaranteeing the rates and service charge of that larger installation.

(d) Voltage.

When the company installs, owns and maintains the transformers the above rates apply to service rendered at 110, 220 and 440 volts under provisions of Rule and Regulation No. 2, at the option of the consumer, and the energy will be metered on the secondary (low) side of the transformer.

When the consumer owns the transformers, service will be rendered at the distribution line voltage available and the service will be measured on the primary (high) side of the transformer.

(e) Credit for ownership of transformer by consumer.

Consumers operating installations having a connected load of 50 horsepower or over and owning the transformers supplying such installations will be allowed the following credits:

Size of installation—horsepower	*Annual credit per h.p. of connected load—per horsepower*
50–99	$1.00
100–249	.90
250–499	.80
500–999	.70
1000–2499	.60
2500 horsepower and over	.50

(f) Contracts.

The company may require a contract for service under this schedule for a period not to exceed three years when service is first rendered and thereafter from year to year.

(g) The service charge will be based on the largest load that may be connected at any one time. For the purpose of calculating service charges one kilowatt of lighting or heating load will be rated at one horsepower.

(h) Consumers permanently increasing or decreasing their connected load will have their bills adjusted as provided in Special Conditions (i) following, original load being considered as discontinuing service and the increased or decreased load as commencing service.

(i) Service commenced or discontinued during the agricultural year.

The following adjustments apply only in the case of service first begun or permanently discontinued and will not be made when installations shut down for a few months.

For a fractional agricultural year the rate will be modified as follows:

The service charge will apply to service taken between April 1 and September 30 at the rate of one-sixth of the annual charge per month.

The size of the blocks of energy charge will be multiplied by the factor in the following table corresponding to the month during which service is begun or discontinued:

Month in which service commences or is discontinued	*—Factor— New service*	*Discontinued service*
April	1.0	.1
May	.9	.1
June	.8	.2
July	.7	.3
August	.6	.4
September	.5	.5
October	.4	.6
November	.3	.7
December	.2	.8
January	.1	.9
February	.1	.9
March	.1	1.0

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DECISION NO. 19398.

ROBERT H. DALY ET AL.

vs.

PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION.

Case No. 1843.
Decided February 25, 1928.

RATES--STEAM--REDUCTIONS.—Due to decrease in price paid for oil, steam rates of Pacific Gas and Electric Company ordered reduced.

BY THE COMMISSION.

SIXTH SUPPLEMENTAL ORDER.

Whereas, Decision No. 12580 (23 C. R. C. 841) in the above entitled matter provides, with reference to the steam rates of Pacific Gas and Electric Company, that such rates be subject to increase or decrease upon approval of this Commission on the basis of three cents per thousand pounds of steam for each ten-cent increase or decrease, respectively, per barrel in the price of oil above or below the price in effect on August 1, 1923; and

Whereas, Pacific Gas and Electric Company now makes affidavit that, by a contract executed January 26, 1928, but effective as of December 17, 1927, the price paid for oil was decreased by six cents per barrel, so that it is now nine cents more than the basic price upon which rates were established in Decision No. 12580;

It is hereby ordered, that Pacific Gas and Electric Company reduce its present rates for steam effective for all meter readings taken on and after February 27, 1928, so that said rates shall be equal to three cents more than the basic rates on file with the Commission as established in said Decision No. 12580.

It is hereby further ordered, that Pacific Gas and Electric Company file with the Commission on or before February 27, 1928, a revision of its schedules as herein designated.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

DECISION NO. 19399.

IN THE MATTER OF THE APPLICATION OF COAST VALLEYS GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER REVISING THE BASE RATE FOR GAS SERVICE AS HERETOFORE FIXED BY DECISION No. 9397, CASE No. 1611.

Application No. 8173.
Decided February 25, 1928.

RATES--GAS--REDUCTIONS.—Due to decrease in price paid for oil, gas rates of Coast Valleys Gas and Electric Company ordered reduced.

BY THE COMMISSION.

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SEVENTH SUPPLEMENTAL ORDER.

Whereas, in Decision No. 11243 (22 C. R. C. 512) in the above entitled matter the Commission provided, with reference to schedules "A" and "B," of Coast Valleys Gas and Electric Company, that such rates would be subject to decrease upon approval of the Railroad Commission on the basis of three cents per one thousand cubic feet for each ten-cent decrease in the price of oil below the price of $1.75 per barrel; and,

Whereas, Coast Valleys Gas and Electric Company now makes affidavit that by a contract executed January 26, 1928, but effective as of December 17, 1927, the price paid for oil was decreased to $1.02 per barrel in Monterey and $1.17 per barrel in Salinas, these prices being in Monterey seventy-three cents per barrel below the basic price, and in Salinas fifty-eight cents below the basic price upon which the rates were established in Decision No. 11243; therefore,

It is hereby ordered, that Coast Valleys Gas and Electric Company reduce its present rate, designated as Schedule "A," so that Schedule "A" shall be twenty-two cents less than the basic rate established in Decision No. 11243 in Application No. 8173.

The change in price of oil at Salinas is not sufficient to effect any reduction in Schedule "B."

It is hereby further ordered, that Coast Valleys Gas and Electric Company file with the Commission on or before February 27, 1928, a revision of its schedule "A" as herein authorized.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

DECISION No. 19400.

IN THE MATTER OF THE APPLICATION OF EAST SIDE CANAL AND IRRIGATION COMPANY, A CORPORATION; JAMES J. STEVINSON, A CORPORATION, AND SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING THE TRANSFER AND SALE OF PROPERTY.

Application No. 14322.
Decided February 25, 1928.

TRANSFER—WATER STORAGE.—East Side Canal and Irrigation Company and James J. Stevinson, a corporation, authorized to transfer to Southern California Edison Company the right, license and/or privilege to store certain waters of the San Joaquin River.

Geo. J. Hatfield and *F. B. Wood*, for East Side Canal and Irrigation Company and James J. Stevinson, a corporation.

Roy V. Reppy, George E. Trowbridge, by *Edward F. Treadwell*, for Southern California Edison Company.

H. P. Dechant, for Federal Power Commission.

CARR, *Commissioner*.

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OPINION.

In this proceeding, East Side Canal and Irrigation Company, a public utility; James J. Stevinson, a nonpublic utility corporation, and Southern California Edison Company, a public utility corporation, make joint application for authority to enter into a contract providing for the storage of certain waters of the San Joaquin River.

A public hearing has been had, after due notice thereof had been given, and the matter is now under submission and ready for decision.

According to the contract, Southern California Edison Company agrees to pay $200,000 to the other two corporations for the right to store certain waters of the river. According to the testimony, the division of the above price is such that $10,000 only goes to the East Side Canal and Irrigation Company.

It was agreed at the hearing that the only question before the Commission was whether the East Side Canal and Irrigation Company should be authorized to enter into the contract. No question is presented here as to the reasonableness of the price being paid by the Southern California Edison Company, or as to whether, in the event that the contract is consummated, the payment should be written into fixed capital or included in the rate base, or be the basis of the issuance of securities, or become a part of the net investment of Southern California Edison Company under the provisions of the Federal Water Power Act.

The general trend of the testimony presented was to the effect that the control of the flow of the river as a result of the carrying out of this contract would leave East Side Canal and Irrigation Company and its consumers in a better position from a service standpoint than if the company succeeded in enforcing its claimed legal rights to appropriate and divert waters from the river. Under these circumstances and with the issue limited as above stated, I can see no reason why East Side Canal and Irrigation Company should not be authorized to enter into the contract and receive the $10,000.

The Federal Power Commission requested that action on the application be delayed until the Attorney General of the United States decides whether or not he should intervene, in behalf of the federal government, in certain pending litigation, with a view to attacking some of the conclusions of *Herminghaus* vs. *Southern California Edison Company*, 73 Cal. Dec. 1.

With the issue limited as set out above, together with the further limitations contained in the form of order following this opinion, the position of the United States is fully protected without the necessity of delaying action.

I recommend the following form of order:

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ORDER.

East Side Canal and Irrigation Company, a corporation; James J. Stevinson, a corporation, and Southern California Edison Company, a corporation, having made joint application for authority to sell and transfer certain rights to store waters of the San Joaquin River, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that East Side Canal and Irrigation Company, a corporation, be and it is hereby authorized to transfer to Southern California Edison Company, a corporation, the right, license and/or privilege to store water upon and in accordance with the terms and conditions and for the uses and purposes as stated and set forth more particularly in the application herein and the exhibits attached thereto which are hereby referred to and made a part of this order, subject, however, to the following further terms and conditions:

1. The authority herein granted shall apply only to such transfer as shall have been made on or before June 30, 1928, and a certified copy of the final instrument of conveyance shall be filed with this Commission by said East Side Canal and Irrigation Company, a corporation, within thirty days from the date upon which it is executed.

2. The consideration given for the transfer of these rights, licenses and/or privileges shall not be urged before this Commission, or any other public body, as a finding of value of the property for rate-fixing, or for any purpose other than the transfer herein authorized.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

DECISION No. 19401.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION ESTABLISHING RATES TO BE CHARGED BY IT FOR GAS AND ELECTRICITY.

Application No. 6078.

Decided February 25, 1928.

RATES—GAS—REDUCTION.—Due to decrease in the price paid for oil, gas rates of San Diego Consolidated Gas and Electric Company ordered reduced.

BY THE COMMISSION.

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SEVENTH SUPPLEMENTAL ORDER.

Whereas, in Decision No. 9412 (20 C. R. C. 425) in the above entitled matter, this Commission provided, with reference to the rates therein established, that upon approval of the Railroad Commission, Schedule No. 1 would be subject to increase or decrease on the basis of 2.4 cents per thousand cubic feet for each ten cents increase or decrease, respectively, in the price of oil above or below the price of $1.75 per barrel at San Diego; and that Schedule No. 3 would be subject to decrease on the basis of three cents per thousand cubic feet for each ten cents decrease in the cost of oil below the price of $1.65 per barrel at San Diego.

Whereas, San Diego Consolidated Gas and Electric Company now makes affidavit that on February 1, 1928, the price of oil at San Diego was decreased five cents per barrel to $1.05 per barrel, this being seventy cents for Schedule No. 1 and sixty cents for schedule No. 3 below the base prices on which rates were established in Decision No. 9412.

It is hereby ordered, that San Diego Consolidated Gas and Electric Company decrease its present rates designated as schedules Nos. 1 and 3, effective for all regular meter readings taken on and after March 1, 1928, so that Schedule No. 1 shall be seventeen cents below the basic rate and Schedule No. 3 shall be eighteen cents below the basic rate, as established in Decision No. 9412.

It is hereby further ordered, that San Diego Consolidated Gas and Electric Company file with the Commission, on or before March 1, 1928, a revision of its schedules as herein ordered.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

DECISION No. 19402.

IN THE MATTER OF THE APPLICATION OF THE CITY OF MARYSVILLE, A MUNICIPAL CORPORATION, THAT THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA FIX AND DETERMINE THE JUST COMPENSATION TO BE PAID BY THE SAID CITY OF MARYSVILLE FOR THE WATER SYSTEM OF THE MARYSVILLE WATER COMPANY, A CORPORATION.

Application No. 10302.

Decided February 25, 1928.

EMINENT DOMAIN—JURISDICTION OF COMMISSION.—Application of Marysville Water Company to determine reasonable expenditures which should be assessed against the City of Marysville dismissed for want of jurisdiction.

EMINENT DOMAIN—JURISDICTION OF COMMISSION.—Under subsection 7 of section 47 (*b*) of the Public Utilities Act the Commission is empowered to determine the reasonable expenditures necessarily incurred by the utility in a condemnation proceeding which should be assessed against a city in two instances only where the petition is of the second class: (1) where the political subdivision

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fails to proceed diligently to submit a proposition to its voters to acquire the properties under eminent domain proceedings; and (2) where the political subdivision fails, if its voters have voted in favor of the acquisition, to file said action in a court of competent jurisdiction within sixty days.

EMINENT DOMAIN—JURISDICTION OF COMMISSION.—There is no provision under the Public Utilities Act which authorizes the Commission to grant such relief when the matter of the acquisition of the properties of a utility has been submitted to the voters within the time allowed by statute and rejected by them.

W. P. Rich, for City of Marysville.
Derlin and Brookman, by *Frank R. Derlin* and *Richard J. Belcher*, for Applicant, Marysville Water Company.

LOUTTIT, *Commissioner*.

FIRST SUPPLEMENTAL ORDER.

On December 21, 1926, by Decision No. 17794 herein, this Commission made and filed its finding of the just compensation to be paid by the city of Marysville to the Marysville Water Company for all of the lands, properties and rights of said company used for the production and distribution of water for domestic, commercial, municipal and other purposes in and about said city of Marysville.

On June 8, 1927, the Marysville Water Company filed an application requesting from this Commission an order:

1. Finding that the city of Marysville has failed to pursue diligently its rights conferred under section 47 (*b*) of the Public Utilities Act;

2. Determining that said finding as to just compensation shall no longer be of any force and effect, and

3. Determining the reasonable expenditures necessarily incurred by the Marysville Water Company in said proceeding which, in the opinion of this Commission, should be assessed against the city of Marysville.

The Commission directed the city of Marysville to appear and show cause why an order should not be issued in conformity with this request. Subsequently, the city of Marysville filed an answer to the said order to show cause, alleging substantially that the city had proceeded with said matter diligently and in accordance with the provisions of the Public Utilities Act, and requesting that the said order to show cause be dismissed. A public hearing was held before me in San Francisco, the matter was duly submitted, and is now ready for decision.

The original petition herein is one of the second class, as specified in section 47 (*b*). Under subsection 6 of that section it is provided in part:

> "In the case of a petition of the second class, if the owner does not file said stipulation within said twenty days, the political subdivision, within sixty days after the Commission has made and filed its said finding, must initiate proceedings for the purpose of submitting to its voters a proposition to acquire under eminent domain proceedings said lands, property and rights, or said part or portion thereof."

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At the hearing it was stipulated by the parties that within sixty days after the Commission had made its finding as to just compensation, the city had initiated proceedings for the purpose of submitting to its voters a proposition whether or not the lands, property and rights of the Marysville Water Company should be acquired, and that at an election held pursuant thereto the proposition was defeated.

Under subsection 7 of section 47 (*b*) of the Public Utilities Act this Commission is empowered to grant relief of the character herein sought where the petition is of the second class, in two instances only: First, where the political subdivision fails to proceed diligently to submit a proposition to its voters to acquire under eminent domain proceedings the lands, property and rights of the utility, and, second, where the political subdivision fails, if its voters have voted in favor of the acquisition of said lands, property and rights of the utility, to file said action in a court of competent jurisdiction within sixty days after the voters have voted in favor of said acquisition.

In view of the stipulation that the city did, within sixty days after the Commission had made its finding as to just compensation, initiate proceedings for the purpose of submitting to its voters the proposition to acquire under eminent domain proceedings the lands, property and rights of the Marysville Water Company, and further, in view of the fact that in so doing the city complied with the procedure outlined in subsection 6 of section 47 (*b*), and initiated the proceeding within the time prescribed by that subsection, it is my opinion that the city proceeded diligently to submit said proposition to its voters.

There is no provision under the Public Utilities Act which authorizes the Commission to grant relief of the character herein sought when the matter of the acquisition of the properties of a public utility has been submitted to the voters within the time allowed by the statute, and rejected by them.

With respect to the request for an order finding that the city of Marysville has failed to proceed diligently with its rights conferred by and under Decision No. 17794, the application should be denied. With respect to the request for an order determining that said finding as to just compensation shall no longer be of any force and effect, and the request for an order determining the reasonable expenditures necessarily incurred by the company which should be assessed against the city, the application should be dismissed for want of jurisdiction. This latter determination is made upon the ground that the power of this Commission to award such relief is dependent upon our finding that the city has failed to proceed diligently which, as above noted, is not the case here.

I recommend the following form of order:

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ORDER.

An application having been filed by the Marysville Water Company, as above set forth, on June 8, 1927, in the above entitled matter, the Commission having fully considered the same, and being now fully advised, and good cause appearing;

It is hereby ordered, that, with respect to the request for an order finding that the city of Marysville has failed to proceed diligently with its rights conferred by and under Decision No. 17794, said application be and the same is hereby denied.

It is hereby further ordered, that, with respect to the request for an order determining that the finding as to just compensation contained in Decision No. 17794 shall no longer be of any force and effect, said application be and the same is hereby dismissed for want of jurisdiction.

It is hereby further ordered, that, with respect to the request for an order determining the reasonable expenditures incurred by the Marysville Water Company in this proceeding which should be assessed against the city of Marysville, said application be and the same is hereby dismissed for want of jurisdiction.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

Decision No. 19411.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA TELEPHONE COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING IT TO ASSUME PAYMENT OF A CERTAIN OUTSTANDING PROMISSORY NOTE IN THE SUM OF FOUR HUNDRED FIFTY THOUSAND DOLLARS AND THE TRUST DEED ENCUMBRANCE SECURING THE PAYMENT OF SAID NOTE, AND AUTHORIZING IT TO EXECUTE AND DELIVER THREE PROMISSORY NOTES IN THE FACE AMOUNT OF ONE HUNDRED FOURTEEN THOUSAND DOLLARS EACH AND TO ENCUMBER ITS OPERATIVE PROPERTY BY A TRUST DEED TO SECURE THE PAYMENT OF ITS PROMISSORY NOTES, AND OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, FOR AUTHORIZATION TO GUARANTEE THE PAYMENT OF SAID PROMISSORY NOTES.

Application No. 14316.

Decided February 25, 1928.

SECURITY ISSUES—NOTES—GUARANTEE.—Southern California Telephone Company authorized to assume payment of a promissory note in the sum of $450,000 with interest at 5½ per cent, secured by a deed of trust, and to issue three promissory notes in the sum of $114,000 each, with interest at 7 per cent. Pacific Telephone and Telegraph Company authorized to guarantee payment of said notes.

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SECURITY ISSUES—FACTORS AFFECTING ISSUANCE.—The mere fact that in 1921 applicant executed an instrument providing for the issue in 1927 of 7 per cent notes is not in itself sufficient reason for the Commission to authorize now the issue of the notes.

SECURITY ISSUES—INTEREST.—Authorization to issue 7 per cent notes for the purpose of financing improvements of property is not to be considered as an obligation on the Commission to recognize, in the future, the interest rate on the notes as indicative of the cost to applicant of its borrowed money.

J. G. Marshall, for Applicants.

BY THE COMMISSION.

OPINION.

In this proceeding the Railroad Commission is asked to make an order authorizing:

1. Southern California Telephone Company to assume the payment of a promissory note in the principal amount of $450,000 payable on April 1, 1935, with interest at the rate of 5.5 per cent per annum secured by a deed of trust on certain real estate and improvements located at 740 South Olive street, Los Angeles;

2. Southern California Telephone Company to execute its deed of trust on said real estate and improvements and to execute and deliver to Morgan Adams, Inc., three promissory notes secured thereby in the principal amount of $114,000 each, and due September 15, 1929, September 15, 1930, and September 15, 1931, respectively, with interest thereon at the rate of 7 per cent per annum;

3. The Pacific Telephone and Telegraph Company to guarantee the payment of the aforesaid promissory note of $450,000 secured by said deed of trust and to agree to hold the grantor harmless from any and all loss, cost and damage on account thereof, and to guarantee the payment of the three notes for $114,000 each to be executed and delivered by Southern California Telephone Company.

The record shows that under date of October 28, 1921, Southern California Telephone Company entered into a lease (Exhibit "A") with James H. Adams and Lillian T. Adams whereby it leased certain premises together with a ten-story building to be constructed thereon by the lessor. The premises are located on South Olive street, Los Angeles, between Seventh and Eighth streets, and are described in the application as follows:

> Lot "C," Heinzeman property, in the city of Los Angeles, county of Los Angeles, State of California, as per map recorded in book 7, page 47, of maps, in the office of the county recorder of said county, and a portion of lot "C" of Tract No. 2252, in said city, as per map recorded in book 22, page 53 of said map records, described as a whole as follows:
>
> Beginning at the southwest corner of said lot "C," Heinzeman property, said corner being in the east line of Olive street, 80 feet wide, distant north 37° 54′ east 95 feet from the north line of Eighth street, 70 feet wide; thence along said south line of Heinzeman property being also the north face of a three-story brick building and a five-story reinforced concrete building, south 52° 14′ 30″ east 135.39 feet to the west line of the west wall of a three-story brick building; thence along said west line north 37° 37′ 30″ east 7 feet to

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the northwest corner of said last mentioned building; thence along the north line of said building, south 52° 14′ 30″ east 30.71 feet to the east line of said lot "C"; thence along said east line of lot "C" north 37° 37′ 30″ east 75.42 feet to the northeast corner of said lot; thence along the east line of said lot "C" Tract No. 2252, north 38° 22′ 30″ east 24.62 feet to the easterly prolongation of the north face of the north wall of a ten-story reinforced concrete building; thence along said prolongation and north face and prolongation thereof, north 52° 14′ 30″ west 165.95 feet to a point in the east line of Olive street, said point being distant south 37° 54′ west 232.70 feet from the south line of the 20-foot alley along the north line of said Tract No. 2252; thence along Olive street, south 37° 54′ west 107.04 feet to the point of beginning.

It appears that under and by virtue of said lease the lessors agreed to construct on the premises a ten-story building. The building was completed in 1922 and has since been used by applicant for office purposes. Under the terms of the lease applicant, among other things, is given the option to purchase the real property and building at any time during September, 1927, by the payment of the sum of $426,400 plus an amount equal to the cost of the new building less 1 per cent per annum for depreciation computed from the date of the completion of the building to the date of the exercising of the option. It is provided that upon exercising the option the lessee, in payment for the properties, shall assume the payment of any encumbrances upon it and, at the option of the lessor, pay in cash an amount not to exceed 20 per cent of the balance of the option price, after deducting the indebtedness assumed, and to execute, in evidence of the remaining 80 per cent of said balance, its four negotiable promissory notes, each being for a sum equal to one-fourth the option price after deducting from the option price the amount of the indebtedness assumed and the amount of the cash payment, the notes to mature one year, two years, three years and four years, respectively, after date, with interest at 7 per cent per annum, and to be secured by a deed of trust. It is further provided that The Pacific Telephone and Telegraph Company shall guarantee the payment of the indebtedness assumed and of the four notes thereafter issued.

It now is reported that on September 15, 1927, Southern California Telephone Company elected to exercise its option to purchase the properties as of that date. On that date they were encumbered by a deed of trust by and between Morgan Adams, Inc., as grantor, Title Insurance and Trust Company, as trustee, and the Metropolitan Life Insurance Company, as beneficiary, and a note secured thereby for $450,000 payable April 1, 1935, with interest at 5.5 per cent per annum in favor of Metropolitan Life Insurance Company. A copy of the deed of trust and note is filed as Exhibit "B."

The purchase price to be paid by the company under the option by the company is $1,019,574.08. It is reported in this connection that

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the building was constructed at a cost of $623,573.26 and that accrued depreciation, at the rate of 1 per cent per annum, to September 15, 1927, amounted to $30,399.18, leaving a balance of $593,174.08. This added to the $426,400 to be paid for the real property, results in the total purchase price of $1,019,574.08, which is payable as follows:

1. In cash	$113,574 08
2. By the assumption of the present outstanding deed of trust and note	450,000 00
3. By the issue, secured by deed of trust, of four promissory notes for $114,000 each	456,000 00
Total	$1,019,574 08

A copy of the proposed deed of trust by and between Southern California Telephone Company, as trustor, Title Insurance and Trust Company, as trustee, and Morgan Adams, Inc., as beneficiary, securing the payment of the four notes for $114,000 each, is filed herein as Exhibit "C." One of the $114,000 notes, by the terms of the lease agreement, is payable one year after date so accordingly in making this application, the request is made to issue only those maturing more than one year after date, namely: those maturing two years, three years and four years, respectively, after issue.

In support of the application herein it is alleged that the acquisition and use of the premises by Southern California Telephone Company is necessary in the performance of its duties to the public and that the ownership thereof by applicant in lieu of its continued leasing will be beneficial and economical to it. It appears that by the terms of the lease the telephone company at present pays a monthly ground rental of $2,123.33—amounting to $25,479.96 annually—and a sum equal to 9 per cent of the cost of the building, which amounts to approximately $56,000, and that in addition it pays all taxes, assessments, insurance, repairs, etc. Upon buying the properties it appears from the testimony herein, that assuming interest at 7 per cent on the cash payment of $113,574.08, applicant's fixed charges on account of the purchase of the properties will be about $64,600, an amount considerably less than it otherwise would have to pay. Further, it appears that the value of the real property is in excess of the price ($426,400) which the telephone company must pay under its option.

After due consideration we are inclined to approve this application. Ordinarily we would question the issue by Southern California Telephone Company, at this time, of 7 per cent notes and it should be said, in this connection, that the mere fact that in 1921 applicant executed an instrument providing for the issue in 1927 of 7 per cent notes is not in itself sufficient reason for this Commission to now authorize the issue of the notes. However, in view of the present value of the real estate and the savings that evidently will accrue as a result

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of the purchase of the properties under the terms outlined herein, we will grant the application. Such action on our part, however, is not to be considered as an obligation on the Commission to recognize, in the future, the interest rate on the notes as indicative of the cost to Southern California Telephone Company of its borrowed money.

ORDER.

Application having been made to the Railroad Commission for an order authorizing the guarantee and assumption of indebtedness and the execution and delivery of a deed of trust and promissory notes, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through such assumption and execution of indebtedness is reasonably required for the purpose specified herein, and that the expenditure for such purpose is not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that Southern California Telephone Company, in part payment for the real property and improvements referred to in the foregoing opinion, be and it hereby is authorized to assume the encumbrance of the deed of trust dated February 12, 1925, now on said properties, a copy of which is filed as Exhibit "B," and to assume the payment of the outstanding promissory note, secured thereby, in favor of Metropolitan Life Insurance Company in the amount of $450,000 payable on April 1, 1935, with interest at the rate of 5.5 per cent per annum, and to execute a deed of trust substantially in the same form as that filed in Exhibit "C" and to issue to Morgan Adams, Inc., its three promissory notes each in the face amount of $114,000 and due September 15, 1929, September 15, 1930, and September 15, 1931, respectively, with interest at the rate of 7 per cent per annum.

It is hereby further ordered, that The Pacific Telephone and Telegraph Company be and it hereby is authorized to guarantee the payment, in the form filed herein as Exhibit "D," of the $450,000 note, the payment of which Southern California Telephone Company is herein authorized to assume, and the performance of the terms and conditions of said deed of trust dated February 12, 1925, securing the payment of said note, and to agree to hold Morgan Adams, Inc., the grantor under said deed of trust, harmless from any and all loss, cost or damage on account therefor, and, in addition, to guarantee the payment of the three notes in the face amount of $114,000 each, which Southern California Telephone Company is herein authorized to execute.

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The authority herein granted is subject to the following conditions:

1. The authority herein granted to execute a deed of trust is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said deed of trust as to such other legal requirements to which said deed of trust may be subject.

2. Applicants, or either of them, shall not hereafter urge the Commission or other public body or court having jurisdiction to consider the rate of interest on the three notes herein authorized to be issued as indicative of the cost to applicants of borrowed money nor shall the authority herein granted be considered as obligating the Commission or other public body or court to so recognize said rate of interest as indicating the cost of borrowed money.

3. Southern California Telephone Company shall keep such record of the issue of the notes and the assumption of the indebtedness, as herein authorized, and of the disposition of the proceeds as will enable it to file, within thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted shall become effective when Southern California Telephone Company has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $792.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

DECISION No. 19412.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, AND A. HARWOOD, FOR THE FORMER TO LEASE TO THE LATTER, AND THE LATTER TO HIRE FROM THE FORMER, CERTAIN OPERATIVE RIGHTS OF THE FORMER FOR THE TRANSPORTATION OF FREIGHT BETWEEN WILLITS AND GARBERVILLE AND INTERMEDIATE POINTS.

Application No. 14318.

Decided February 25, 1928.

AUTOMOTIVE TRANSPORTATION—LEASE OF OPERATIVE RIGHTS.—Application of Pickwick Stages System to lease to A. Harwood operative rights for the transportation of freight between Willits and Garberville denied.

AUTOMOTIVE TRANSPORTATION—LEASE OF OPERATIVE RIGHTS.—An automotive transportation company will not be authorized to lease that part of its operative right requiring it to transport property other than express carried on its passenger stages. If it desires to divest itself of the obligation to carry freight, application should be made to abandon such service.

BY THE COMMISSION.

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OPINION AND ORDER.

This is an application by Pickwick Stages System, a corporation, engaged in the business of transporting persons and property between various points in California, to lease to A. Harwood a part of the operating right under which Pickwick Stages System is operating between Willits and Garberville a service for the transportation of passengers, express and freight, Pickwick proposing to continue the service of transporting passengers and express on its passenger stages, and Harwood, who has joined in the application, proposing to take over the freight transportation service.

The right of Pickwick Stages System authorizing the transportation of passengers, freight and express between Willits and Garberville was established in the following manner:

> Under Decision No. 7888, dated July 22, 1920, on Application No. 5297, Hy Nelson was granted a certificate of public convenience and necessity for the transportation of passengers, express and freight between Willits and Garberville, serving as intermediate points Outlet, Arnold, Longvale, Laytonville, Twin Rock, Cummings, Leggett Valley, Rock Creek, Redwood Flat, Bridges Creek, Red Mountain Creek, Wards Flat, McCoy Creek, Andersonia and Smiths.
>
> Under Decision No. 8871, dated April 16, 1921, on Application No. 6729, Hy Nelson was authorized to transfer to Thomas B. Riley the rights obtained by Nelson in Application No. 5297.
>
> Under Decision No. 13435, dated April 18, 1924, on Application No. 9807, Thomas B. Riley was authorized to transfer to West Coast Transit Company, Inc., his right for the transportation of passengers, freight and express (as corrected by supplemental order, Decision No. 18952) between Willits and Garberville and intermediate points, which right was secured by Riley through purchase from Hy Nelson under Application No. 6729.
>
> Pickwick Stages System was authorized to acquire the above described right by Decision No. 17078, on Application No. 12927.

The lease provides for the payment of a yearly rental of $1 and it is to remain in effect for one year and thereafter from year to year until notice of its termination has been filed with the Railroad Commission. Harwood is to charge and collect the rates now shown by Pickwick Stages System in its tariff covering service for the transportation of freight between Willits and Garberville and intermediate points.

Applicant Pickwick Stages System claims that it is primarily an operator of an automotive passenger stage service; that it does not desire to operate a freight carrying service and for these reasons desires to lease that part of its operating right between Willits and Garberville requiring it to transport property other than express carried on its passenger stages.

The statements in this matter by Pickwick Stages Company lead to the conclusion that it desires to divest itself of the obligation to carry freight and that being the case it should apply to this Commission to abandon such service.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be denied.

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It is hereby ordered, that the above entitled application be and the same hereby is denied.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

DECISION NO. 19413.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING IT TO PURCHASE TWO THOUSAND SHARES OF THE COMMON CAPITAL STOCK OF THE OJAI POWER COMPANY, A CORPORATION.

Application No. 14332.

Decided February 25, 1928.

SECURITY ISSUES—PURCHASE OF BY ANOTHER UTILITY.—Southern California Edison Company authorized to acquire outstanding stock of Ojai Power Company.

SECURITY ISSUES—PURCHASE OF BY ANOTHER UTILITY.—When the consideration to be paid upon the acquisition of stock of another utility was substantially in excess of the cost of that company's properties as shown by its balance sheet, authorization was granted subject to the condition that not more than a specified amount of the purchase price per share could be charged to an asset account or capitalized, and that the difference must be charged to miscellaneous debits to profit and loss.

Gail C. Larkin, for Applicant.

BY THE COMMISSION.

OPINION.

The Southern California Edison Company asks permission to purchase all of the outstanding capital stock of the Ojai Power Company upon the terms and conditions hereinafter set forth.

The Ojai Power Company has an authorized capital stock of $200,000 divided into 2000 shares of the par value of $100 each. It is reported that the company has issued and outstanding 1905 shares ($190,500 par value) of its common capital stock and that it has a subscription for one additional share of stock which has not yet been issued. The company as of December 31, 1927, reports assets and liabilities as follows:

Assets.

Electric properties	$152,936 47	
Water properties	51,535 80	
		$204,472 27
Cash		15,600 56
Materials and supplies		4,538 69
Accounts receivable		3,023 70
Miscellaneous investments		2,200 00
Work in progress		220 49
Prepayments		360 06
Total assets		$230,415 77

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Liabilities.

Capital stock	$190,500 00
Stock subscriptions	17 50
Consumers' deposits	977 48
Consumers' advances	4,070 40
Accounts payable	2,641 34
Accruals	388 36
Depreciation reserve	6,059 69
Miscellaneous reserves	412 05
Deferred credits	551 39
Surplus	24,797 56
Total liabilities	$230,415 77

The record shows that applicant, Southern California Edison Company, has been offered a majority of the outstanding stock of Ojai Power Company, provided applicant issue to the holders of such stock six shares of its Series "C" 5½ per cent stock of the par value of $25 per share for each share of the common capital stock of Ojai Power Company of the par value of $100 per share; and provided, further, that applicant, Southern California Edison Company, agrees to pay to the minority stockholders of the Ojai Power Company who should be unwilling to exchange their stock, $144 cash for each share of the stock held by such stockholders.

It will be noted that the consideration to be paid for the stock of the Ojai Power Company is substantially in excess of the cost of that company's properties, as shown by its balance sheet. It does not appear to us to be in the public interest to permit applicant to issue $300,000 par value of its 5½ per cent preferred stock to acquire $200,000 of common stock of the Ojai Power Company. It may, if it so desires, pay $144 per share cash for such stock, but if such sum or a lesser amount is paid for the stock, not more than $113 per share may be charged to an asset account or capitalized through security issues. The difference between the purchase price and $113 per share must be charged by the purchaser to account 508, miscellaneous debits to profit and loss.

ORDER.

Southern California Edison Company, having asked permission to purchase the authorized, issued and outstanding stock of Ojai Power Company, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the acquisition of such stock by the Southern California Edison Company is in the public interest, provided such stock is acquired under the terms and conditions of this order; therefore,

It is hereby ordered, that the Southern California Edison Company may, on or before July 1, 1928, acquire the authorized, issued and outstanding common stock of the Ojai Power Company at not more than $144 per share, provided that not more than $113 of the purchase price per share may be charged to an asset account or capitalized

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through the issue of securities, and that the difference between the purchase price per share and said $113 per share must be charged to account 508, miscellaneous debits to profit and loss.

It is hereby further ordered, that within thirty days after the purchase of such stock of Ojai Power Company, Southern California Edison Company shall file with the Railroad Commission a statement showing the names of the persons from whom stock of Ojai Power Company was acquired and the price paid per share.

It is hereby further ordered, that the authority herein granted will become effective ten days after the date hereof.

Dated at San Francisco, California, this twenty-fifth day of February, 1928.

DECISION No. 19414.

IN THE MATTER OF THE APPLICATION OF MOTOR FREIGHT TERMINAL COMPANY, A CORPORATION, TO BUY, AND BAKERSFIELD AND LOS ANGELES FAST FREIGHT COMPANY, A CORPORATION; LOS ANGELES AND WEST SIDE TRANSPORTATION COMPANY, A CORPORATION, AND LOS ANGELES AND SANTA BARBARA MOTOR EXPRESS CO., INC., A CORPORATION, TO SELL, AUTOMOBILE FREIGHT LINES OPERATING BETWEEN LOS ANGELES AND OTHER POINTS, AND ALSO FOR AUTHORITY TO ISSUE STOCK.

Application No. 14421.

Decided February 28, 1928.

CONSOLIDATION—SECURITY ISSUES.—Motor Freight Terminal Company authorized to acquire operative rights and properties of Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Company, and to issue in payment therefor $220,000 of common stock.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION.—In authorizing the consolidation of the properties of several automotive transportation companies and the issuance of securities therefor by the purchasing company, no consideration was given to the reported increase in land value of terminal properties owned by the purchasing company and not being transferred.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION.—After the granting of authorization to a purchasing company to issue stock in payment for properties to be acquired, such stock may be distributed among the selling corporations in such amounts as may be determined by applicants.

George Clark, for Applicants.

BY THE COMMISSION.

OPINION.

In the above proceeding the Railroad Commission is asked to authorize the transfer to Motor Freight Terminal Company of the operative rights and properties of Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., and the issue by Motor Freight Terminal Company of $360,000 of stock in payment for such rights and properties.

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Motor Freight Terminal Company is the owner of terminal property in Los Angeles consisting of 44,000 square feet of ground and a two-story Class "A" concrete building. The other three companies involved in this application are engaged in operating automobile freight lines, Bakersfield and Los Angeles Fast Freight Company operating between Los Angeles and Bakersfield and intermediate points, Los Angeles and West Side Transportation Company between Los Angeles and Taft and intermediate points, and Los Angeles and Santa Barbara Motor Express Co., Inc., between Los Angeles and San Luis Obispo and intermediate points, all as hereinafter set forth.

It appears that in general the four corporations are controlled by the same interests, who have decided to consolidate the ownership and operation of the four businessess under one corporation, it being thought that the transaction will simplify and facilitate the operations and result in substantial economies. For these reasons arrangements have been made to transfer the properties of the three transportation companies to Motor Freight Terminal Company.

The application shows that Motor Freight Terminal Company was organized on or about May 14, 1925, with an authorized capital stock of $500,000, divided into 5000 shares of the par value of $100 each, all common. At present $10,000 of stock is outstanding and the company proposes to issue, in addition, $360,000 of stock in payment for the operative rights and properties of the transportation companies, subject to outstanding liabilities.

The operative rights to be transferred were acquired by the present operators under authority granted by the Commission as follows:

I. **Bakersfield and Los Angeles Fast Freight Company.**

1. Under Decision No. 7786, dated June 24, 1920, in Application No. 5823, the company acquired a certificate permitting the operation of an automobile truck line as a common carrier of freight between Bakersfield and Los Angeles, serving as intermediate points the communities between Saugus and Bakersfield, no authority being given for the transportation of freight locally in the territory between Los Angeles and Saugus, including Saugus.

2. Under Decision No. 10884, dated August 19, 1922, in Application No. 8057, it acquired a certificate for the transportation of freight in loads of truck capacity, upon tender by one or more shippers, aggregating not less than five tons, from any point within the distance of fifteen miles from the state highway (Ridge Route) between Castaic and Rose Station.

3. Under Decision No. 14171, dated October 11, 1924, in Application No. 10536, it acquired a certificate to transport cotton only, between Arvin, Weedpatch, Magunden, Shafter, Wasco and Bakersfield in

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connection with and as part of its existing transportation service between Los Angeles and Bakersfield.

4. Under Decision No. 17098, dated July 12, 1926, in Application No. 11244, it acquired a certificate for the operation of an automobile truck line as a common carrier of freight between Los Angeles and Wasco and between Bakersfield and Wasco, as supplemental and in addition to its freight operating right between Los Angeles and Bakersfield.

II. Los Angeles and West Side Transportation Company.

1. Under Decision No. 13239, dated March 4, 1924, in Application No. 9701, the company acquired a certificate permitting the operation of an automobile truck service as a common carrier of freight between Los Angeles and Taft, Maricopa, Fellows, McKittrick and points in the Westside oil fields, with the provision, however, that no freight be carried locally in the territory between Los Angeles and Taft and Maricopa, the authority being granted for the carriage of through shipments between Los Angeles and the communities located in the Westside oil fields. It also acquired the right temporarily to reroute and divert its trucks branching off the Ridge Route, about twelve miles beyond Grape Vine Station, over the dirt road commonly known as Maricopa Flat road, service to be resumed over the regular route upon the revocation by the board of supervisors of Kern County of an ordinance, prohibiting the use of the regular route via Panama by trucks of a gross weight in excess of 10,000 pounds. It also acquired the right to operate between the junction of the Ridge Route and the Maricopa Flat road north of Grape Vine Station and a point ten miles west on the Maricopa Flat road for the purpose of serving the Wheeler Ridge oil district.

2. Under Decision No. 14143, dated October 7, 1924, in Application No. 9891, it acquired authority for an alternate routing as follows:

> From Greenfield corner north to Bakersfield, thence west from Bakersfield via Rosedale and Bowerbank to Buttonwillow, thence south to the Elk Hills oil fields, and west and southwest to McKittrick; also on the Maricopa Flat road between Maricopa and the state highway at its conjunction with the Maricopa Flat road.

This decision set forth that this routing was an alternative or optional one only intended to economize time in delivering shipments to consignees and not for the purpose of including any additional service than that heretofore granted.

III. Los Angeles and Santa Barbara Motor Express Co., Inc.

1. Under Decision No. 12226, dated June 19, 1923, in Application No. 9036, this company acquired a certificate of public convenience and necessity permitting the operation of an automobile truck line as a

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common carrier of freight and express between Los Angeles and Santa Barbara via Saugus, Santa Paula, Ventura and intermediate points.

2. Under Decision No. 15665, dated November 21, 1925, in Application No. 10748, it acquired a certificate permitting an extension of its service between Santa Barbara and San Luis Obispo, serving as intermediate points Goleta, Capitan, Gaviota, Los Cruces, Buellton, Los Alamos, Orcutt, Santa Maria, Guadalupe, Nipomo, Arroyo Grande and Pismo Beach, for the transportation of freight originating in Santa Barbara or points south thereof on the company's service between Los Angeles and Santa Barbara and destined to points north of Santa Barbara, and for freight originating at points to be served by the company between San Luis Obispo and Santa Barbara and destined to Santa Barbara and points south thereof, and of no other service, it being provided, however, that the company might transport, in quantities of ten tons or more, freight picked up within the radius of ten miles on either side of the route traversed by the company and that no freight might be transported locally between Santa Barbara and San Luis Obispo, except between Buellton and Orcutt, over and along the state highway between Santa Barbara and San Luis Obispo. On December 17, 1927, an order was made reopening Application No. 10748 for further hearing on December 29, 1927, and it now is under submission.

3. Under Decision No. 16992, dated June 25, 1926, in Application No. 12919, it acquired a certificate permitting the operation of an automobile truck line as a common carrier of freight between Los Angeles, Saticoy and Santa Paula.

Motor Freight Terminal Company does not ask permission, upon acquiring the various operative rights referred to above, to consolidate them or to enlarge any of the rights now possessed by the three transportation companies; it merely seeks to bring them under one ownership.

The physical properties to be transferred include, according to Exhibit one, ninety-seven trucks and trailers, furniture, fixtures, shop and other equipment and terminal sites. In addition the current assets will be taken over by the purchasing corporation and liabilities, amounting, on December 31, 1927, to $210,152.53, will be assumed by it. As part payment for the properties the Motor Freight Terminal Company asks permission to issue $360,000 of common stock.

Exhibit one indicates a combined net worth for the applicants of $215,495. In determining this amount it appears that the assets have been considered at the original costs to the several corporations and that there has been deducted from these costs depreciation at the rate of 25 per cent per annum on automobiles and at 20 per cent on other properties. In determining the net worth, consideration was given to

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the properties of Motor Freight Terminal Company as well as to the properties of the other three companies. The Motor Freight Terminal Company has $10,000 of stock outstanding which should be deducted from the $215,495. Deducting the $10,000 from the $215,495 leaves a balance of $205,495.

It was urged at the hearing that the books of the companies did not reflect any development costs. However, no definite figures were submitted to show what such costs actually were. Evidence was also submitted to show the increase in the value of the real property owned by some of applicants. Particular attention was called to the increase in land value of the Los Angeles terminal properties owned by Motor Freight Terminal Company and the terminal properties at San Luis Obispo owned by the Los Angeles and Santa Barbara Motor Express Co., Inc. The terminal properties in Los Angeles are not being transferred and therefore we feel that no consideration should be given in this proceeding to the reported increase in value. The increase in the value of land of other terminals which are being transferred has been considered by us. We feel that applicants have not justified the issue of $360,000 of stock. The order herein will permit the Motor Freight Terminal Company to issue not exceeding $220,000 of stock in part payment for the properties of three transportation companies mentioned herein. The $220,000 of stock may be distributed amongst the selling corporations in such amounts as may be determined by applicants.

It should be noted that the Commission has taken the position that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given. The Commission at the early stages of the development of this kind of transportation should be extremely careful not to lend encouragement to the idea that these rights possess a substantial element of value, either for rate fixing or capitalization.

ORDER.

Application having been made to the Railroad Commission for an order authorizing the transfer of operative rights and properties and the issue of $360,000 of stock, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the application should be granted as herein provided and that the money, property or labor to be procured or paid for through the issue of $220,000 of stock is reasonably required for the purpose

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specified herein, and that the expenditure for such purpose is not, in whole or in part, reasonably chargeable to operating expense or to income, and that this application in so far as it involves the issue of $140,000 of stock should be denied without prejudice;

It is hereby ordered, that Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., be and they hereby are authorized to transfer to Motor Freight Terminal Company the operative rights and properties, referred to in this application and in the foregoing opinion, subject to outstanding indebtedness of approximately $210,000, and Motor Freight Terminal Company be and it hereby is authorized to issue on or before June 30, 1928, not exceeding $220,000 of stock in part payment for such operative rights and properties.

The authority herein granted is subject to the following conditions:

1. No authority is hereby granted Motor Freight Terminal Company to consolidate or unify the operative rights herein authorized to be transferred or to expand them in any way.

2. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.

3. Applicants Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., shall immediately unite with applicant Motor Freight Terminal Company in common supplement to the tariffs on file with the Commission; applicants Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., on the one hand withdrawing, and applicant Motor Freight Terminal Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.

4. Applicants Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., shall immediately withdraw time schedules filed in their names with the Railroad Commission and applicant, Motor Freight Terminal Company shall immediately file, in duplicate, in its own name, time schedules covering service heretofore given by applicants Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the names of applicants Bakers-

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field and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., or time schedules satisfactory to the Railroad Commission.

5. The rights and privileges herein authorized to be transferred may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

6. No vehicle may be operated by applicant Motor Freight Terminal Company, unless such vehicle is owned by said applicant or is leased under a contract or agreement on a basis satisfactory to the Railroad Commission.

7. Motor Freight Terminal Company shall keep such record of the issue of the stock herein authorized as will enable it to file within thirty days after such issue a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

8. The authority herein granted shall become effective upon the date hereof.

9. Bakersfield and Los Angeles Fast Freight Company, Los Angeles and West Side Transportation Company and Los Angeles and Santa Barbara Motor Express Co., Inc., shall file with the Commission within thirty days after the transfer of their operative rights and properties financial reports, prepared on the annual report forms prescribed by this Commission, showing their operations from January 1, 1928, down to the date of transfer.

It is hereby further ordered, that the application in so far as it involves the issue by Motor Freight Terminal Company of $140,000 of stock be and it hereby is denied without prejudice.

Dated at San Francisco, California, this twenty-eighth day of February, 1928.

DECISION No. 19422.

IN THE MATTER OF THE APPLICATION OF PORTOLA WATER COMPANY, A CORPORATION, FOR AUTHORITY TO ISSUE CAPITAL STOCK AND AUTHORITY TO ISSUE PROMISSORY NOTES.

Application No. 13652.

Decided February 28, 1928.

RATES—WATER UTILITY.—Portola Water Company authorized to make effective rates established by Decision No. 18746.

BY THE COMMISSION.

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FIRST SUPPLEMENTAL ORDER.

The Commission, in its Decision No. 18746, dated August 20, 1927, in the above entitled application, established rates for the sale of water to applicant's consumers, providing among other things, that the effective date of said rates be contingent upon the company sinking a well in the Feather River for the purpose of increasing its water supply and equipping and connecting the same with its present water system. An investigation shows that this work has not yet been completed on account of frozen ground and difficulties caused by winter weather, but the work was found to be well advanced and the company has given its assurance to this Commission in writing that the said improvements will be completed and in operation on or before June 1, 1928, which date is prior to the time additional water will be needed for the summer season.

It appearing that this company is in need of the revenues to be derived from the rates established in the above numbered decision, in order to complete said improvements and render adequate service to its consumers, the schedule of rates as established in Decision No. 18746 will be permitted to become effective for all service rendered on and after the first day of March, 1928, as provided for in said decision.

It is hereby ordered, that Portola Water Company, a corporation, be and it is hereby authorized to place in effect and charge the schedule of rates established by this Commission in its Decision No. 18746, dated August 20, 1927, for all water service rendered to its consumers on and after the first day of March, 1928, provided, however, that the improvements as ordered in said Decision No. 18746 be installed and in proper operation, in a manner acceptable to this Commission, on or before the first day of June, 1928.

It is hereby further ordered, that, in the event said improvements are not so installed in a manner acceptable to this Commission on or before said first day of June, 1928, the authority herein granted to charge said schedule of rates shall terminate without further order of this Commission.

It is hereby further ordered, that in all other respects this Commission's Decision No. 18746 shall remain in full force and effect.

Dated at San Francisco, California, this twenty-eighth day of February, 1928.

DECISION No. 19425.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, ASKING PERMISSION TO PUBLISH, FILE AND PUT INTO EFFECT RATES FOR EXCHANGE, INTEREXCHANGE AND TELEGRAPH SERVICE AT BROCKWAY, PLACER COUNTY, CALIFORNIA.

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Application No. 14135.
Decided February 28, 1928.

CERTIFICATES—TELEPHONE UTILITY—EXCHANGE.—Pacific Telephone and Telegraph Company authorized to establish telephone exchange service at Brockway, Placer County.

SERVICE—ACCESSORIES AND CONNECTIONS—TELEPHONE.—Upon the establishment of a new exchange a telephone utility should compensate present subscribers for any of their property which will become nonoperative.

J. G. Marshall, for Applicant.

BY THE COMMISSION.

OPINION.

The Pacific Telephone and Telegraph Company asks permission to establish a telephone exchange at Brockway, Placer County, California, and to make effective rates for exchange and interexchange telephone service and telegraph service.

A public hearing in this proceeding was held by Examiner Rowell in Tahoe on January 11, 1928, at which place and time the matter was submitted for decision.

Brockway is a summer resort situated on Lake Tahoe and approximately ten miles northeast of Tahoe. The only telephone service now existing in this community is received by means of subscriber-owned facilities from the Truckee and Tahoe Tavern exchanges of applicant company. It is proposed to render exchange telephone service from a common battery switchboard and to furnish interexchange telephone service and telegraph service between Brockway and points outside of the proposed exchange territory. The rates requested for exchange service are on a level comparable with those effective for similar service in applicant's exchanges of similar size in other parts of California. Proposed interexchange telephone rates and telegraph rates are in accordance with those generally effective in California.

No objection to the proposal of applicant was heard and it appearing that the establishment of an exchange as requested is to the best interests of the public in the community of Brockway, the order following will so authorize.

The utility should compensate its present subscribers for any of their telephone property which will become nonoperative with the establishment of the Brockway exchange.

ORDER.

The Pacific Telephone and Telegraph Company having made request of the Railroad Commission for authority to establish a telephone exchange at Brockway, Placer County, and to make effective rates for exchange telephone service therein, rates for interexchange telephone service and telegraph service thereto and therefrom, a public hearing

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having been held in the proceeding, the matter having been submitted and being ready for decision;

The Railroad Commission of the State of California finds as a fact that public convenience and necessity require that The Pacific Telephone and Telegraph Company establish a telephone exchange at Brockway; and

It is hereby ordered, that The Pacific Telephone and Telegraph Company shall:

1. Establish and place in operation on or before May 15, 1928, a telephone exchange at Brockway for service in an exchange area as shown on a map thereof included in Applicant's Exhibit No. 2 presented at the hearing in this proceeding.

2. Establish on or before May 15, 1928, a primary rate area of Brockway exchange as shown on a map thereof in applicant's above mentioned Exhibit No. 2.

3. Establish rates for local exchange telephone service in Brockway exchange as set forth in the above mentioned Exhibit No. 2, effective May 15, 1928.

4. Establish rates for toll interexchange telephone service and telegraph service between Brockway exchange and other points on the bases used by applicant generally throughout the State of California for similar services under similar conditions, effective May 15, 1928.

5. Submit to the Railroad Commission for filing on or before May 15, 1928, maps showing the exchange area and primary rate area of Brockway as ordered in 1 and 2 above.

6. Submit to the Railroad Commission for filing on or before May 15, 1928, rates for exchange telephone service, toll interexchange telephone service and telegraph service as ordered in 3 and 4 above.

7. Discontinue in the Brockway exchange area all services and rates not provided for in 1, 2, 3 and 4 above effective May 15, 1928.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-eighth day of February, 1928.

DECISION No. 19426.

IN THE MATTER OF THE INVESTIGATION ON THE COMMISSION'S OWN MOTION OF THE REASONABLENESS OF THE RATES, CHARGES, PRACTICES, CONTRACTS, RULES, REGULATIONS, SCHEDULES AND CONDITIONS OF SERVICE, OR ANY OF THEM, OF HUNTINGTON BEACH WATER COMPANY, A CORPORATION, ENGAGED IN THE BUSINESS OF SUPPLYING WATER TO THE INHABITANTS OF THE CITY OF HUNTINGTON BEACH AND ADJACENT COMMUNITIES, ORANGE COUNTY, CALIFORNIA.

Case No. 2499.

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Decided February 29, 1928.

RATES—WATER UTILITY REDUCTION.—Huntington Beach Water Company, serving Huntington Beach and adjacent territory in Orange County, authorized to reduce rates.

S. M. Haskins, for Huntington Beach Water Company.
A. J. Thedieck, City Attorney, for City of Huntington Beach.

CARR, *Commissioner*.

OPINION.

A preliminary hearing in the above entitled matter was held at Huntington Beach on February 28, 1928, in the course of which representatives of the company stated that the company recognized that, under existing conditions, it had been earning rather more than a fair return, and that it had proposed a modification in its existing rate schedule which would effect a substantial reduction in its present rates; that with the approval of the Commission, it desired to put its new schedule into effect as of March 1, 1928. The present schedule is as follows:

1. 400 cubic feet, minimum, $1 per month.
2. Next 3000 cubic feet 15 cents per hundred cubic feet.
3. All in excess of 3400 cubic feet, 10 cents per hundred cubic feet.

The proposed new schedule is as follows:

1. First 600 cubic feet, minimum, $1 per month.
2. Next 3000 cubic feet, 14 cents per hundred cubic feet.
3. All in excess of 3600 cubic feet, 8 cents per hundred cubic feet.

There seems to be no reason why the proposed new schedule should not be made effective at once. I therefore recommend the following form of *ad interim* order:

ORDER.

In the course of the hearing in the above entitled matter, the company proposing and desiring to put into effect, as of March 1, 1928, the schedule of rates hereinafter set forth, and it further appearing that said proposed schedule of rates represents a substantial reduction from the existing schedule;

It is hereby ordered, that Huntington Beach Water Company be and the same hereby is authorized and directed to charge, from and after March 1, 1928, the following rates:

It is hereby ordered, that Huntington Beach Water Company be and the same hereby is authorized and directed to charge, from and after March 1, 1928, the following rates:

1. First 600 cubic feet, minimum, $1 per month.
2. Next 3000 cubic feet, 14 cents per hundred cubic feet.
3. All in excess of 3600 cubic feet, 8 cents per hundred cubic feet.

and to file with the Commission the usual form of schedules conforming thereto.

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The effective date of this order shall be February 29, 1928.

The foregoing opinion and order are hereby adopted as the opinion and order of the Commission, but this order is not to be deemed a final disposition of this proceeding.

Dated at San Francisco, California, this twenty-ninth day of February, 1928.

DECISION No. 19427.

IN THE MATTER OF THE APPLICATION OF A. E. MALLETT AND GENE ANTICHI, COPARTNERS, DOING BUSINESS UNDER THE FICTITIOUS NAME OF SACRAMENTO-CORNING FREIGHT LINE, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AN AUTO TRUCK LINE AS A COMMON CARRIER OF PROPERTY, FOR COMPENSATION, BETWEEN YOLO, ZAMORA, DUNNIGAN, ARBUCKLE, WILLIAMS, MAXWELL, DELEVAN AND NORMAN, CALIFORNIA, AND BETWEEN SAID POINTS AND SACRAMENTO AND CORNING, CALIFORNIA, AND CERTAIN INTERMEDIATE POINTS, AS AN EXTENSION AND PART OF APPLICANTS' PRESENT OPERATIONS BETWEEN SACRAMENTO AND CORNING, CALIFORNIA.

Application No. 13939.

Decided February 29, 1928.

CERTIFICATE—AUTOMOTIVE TRANSPORTATION—TRUCK.—G. Antichi (Sacramento-Corning Freight Line) authorized to operate truck service between Yolo, Zamora, Dunnigan, Arbuckle, Williams, Maxwell, Delevan and Norman and all points between Sacramento and Corning now being served.

Sanborn and Rochl and DeLancey C. Smith, by *A. B. Rochl*, for Applicants.
A. B. Mason, for Southern Pacific Company, Protestant.
G. A. Velsir, for American Railway Express Company, Protestant.
C. A. Teutschell, for Traffic Department, Sacramento Chamber of Commerce.

BY THE COMMISSION.

OPINION.

A. E. Mallett and Gene Antichi, copartners, doing business under the fictitious name of Sacramento-Corning Freight Line, have petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an auto truck line as a common carrier of property, for compensation, between Yolo, Zamora, Dunnigan, Arbuckle, Williams, Maxwell, Delevan and Norman, and between all such points and all the points between Sacramento and Corning now served by applicants, under certificate as authorized by this Commission, as an extension and as part of applicants' present service between Sacramento and Corning and the intermediate points of Willows, Artois and Orland.

A public hearing on this application was conducted by Examiner Handford at Sacramento, the matter was duly submitted and is now ready for decision.

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Applicants propose to charge rates in accordance with a schedule as set forth in paragraph IV of the application; to operate on a schedule of two round trips daily, excepting Sundays and holidays; and to operate one Mack truck of 2½ tons capacity and equipped with pneumatic tires, in addition to the present equipment now in use on their authorized line, and offer to add such additional equipment as may be required by the demands of traffic.

Applicants rely, as justification for the granting of the certificate herein sought, on the following alleged facts: (1) that there is no through auto truck service between Sacramento and the points proposed to be served; (2) that the trucks of applicant pass through the communities proposed to be served in their operation over the authorized route between Sacramento and Corning; (3) that many complaints have been made by merchants and shippers located at intermediate points, or shipping to such points, regarding the refusal of applicants to render service; (4) that the existing service of the Southern Pacific Company to and from the additional points herein proposed to be served is not as expeditious nor as adequate as that proposed by applicants; (5) that numerous requests have been received by applicants to establish the service; (6) that applicants have profitably operated the service between Sacramento and Corning and the intermediate points of Willows, Artois and Orland, and the service to and from the intermediate points for which authority is now sought can also be profitably conducted and the public convenience and necessity further subserved if applicants are authorized to operate serving the additional intermediate points on their present authorized route; and (7) that conditions have materially changed since the previous filing of an application for authority to serve the intermediate points in that the demand by merchants and the public for such service is frequent and insistent.

A. E. Mallett, one of the copartnership, testified regarding the present operations of applicants between Sacramento and Corning serving Willows, Artois and Orland as intermediate points; that the present operations were profitable; that the proposed service to intermediate points now prohibited was to be established in response to many requests from merchants and receivers of freight; that much of the business anticipated was now being transported by trucks not under the regulation of the Commission; that from one to three inquiries daily were received at Sacramento for transportation to the points proposed and one or two inquiries between intermediate points; and that the present freight service afforded by the Southern Pacific Company consisted of but one round trip daily, leaving Sacramento at 6 a.m. and Willows at about 8:30 a.m. This witness estimated that additional tonnage of 4 to 4½ tons daily would be cared for on north-

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bound trips from Sacramento with a lesser tonnage on southbound trips. The operation has been conducted since 1922 and, due to the demands for service, applicants proposed to place in service an additional schedule to care for the transportation of perishable commodities.

A. C. Dittlock, employed in the traffic department of A. Levy & D. Zentner, wholesale produce merchants, testified that the proposed service was desirable in that earlier deliveries of perishable products could be made and that the establishment of the additional service would increase the business of his company to points on the west side of the Sacrametno Valley which are proposed to be served by applicants by 33⅓ to 50 per cent; that the proposed service is more attractive than the present rail and express transportation in offering earlier delivery of perishable products and that a tonnage of from 3 to 3½ tons would be available for movement if the application were to be granted.

R. M. Hill, a grocer of Arbuckle, testified that he would use the proposed service of applicants for the transportation of groceries, vegetables and fresh meats to the extent of approximately 1500 pounds daily. This witness now secures most of his vegetables from Sacramento by truck although some arrive by express. The truck delivery is made at 4.30 a.m. before business hours and the express deliveries at 11 a.m. which is late for the business of this witness. Less than carload freight from Sacramento is received from 11 a.m. to 3.30 p.m. on the day following the delivery to the Southern Pacific Company at Sacramento and both freight and express shipments require the payment of local drayage charges from the railroad station at Arbuckle.

Lemont H. Stinson, a druggist at Arbuckle, testified that most of his merchandise was shipped from Sacramento. This witness would use the proposed service by reason of its expedition and to avoid the heavy local drayage charge at Arbuckle.

Lewis W. Hale, handling groceries, produce and feed at Arbuckle, receives the majority of his merchandise from Sacramento, securing his perishables from the trucks of the Pacific Fruit and Produce Company. This witness favors the establishment of the proposed service and will use same, if authorized, for the transportation of from 1 to 3½ tons per week, also enabling him to dispense with the operation of his own truck.

P. T. Foster, garage operator at Zamora, R. L. Cook of Barrett & Cook, grocers at Maxwell and Chas. E. Stockford, machinist and blacksmith at Williams, also testified in behalf of applicants, stating that they would use same, if authorized, by reason of the expedition to be afforded shipments.

Petitions signed by 26 merchants of Maxwell, Williams, Arbuckle,

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Zamora, Yolo, Dunnigan, Norman and Delevan endorsing the proposed service were filed by applicants.

The Southern Pacific Company and American Railway Express Company protest the granting of the application.

P. W. Bernard, a witness for Southern Pacific Company, testified regarding the local freight service operated by his company in the territory proposed to be served by applicants; that two merchandise cars left Sacramento daily at 6.45 p.m., one car distributing to Yolo, Zamora, Arbuckle and Dunnigan, the other distributing to Willows, Williams, Maxwell, Delevan and Norman; that the approximate time of arrival and that freight was available for consignees was on the following morning at Yolo, 7 a.m., at Zamora, 9.30 a.m., at Dunnigan, 10 a.m., at Arbuckle, 11.30 a.m., at Norman, 8 p.m., at Delevan, 8.45 a.m. at Maxwell, 9 a.m. and at Williams 10 a.m.; that this service had been effective for practically one year; and that the freight office at Sacramento was open for the receipt of shipments from 7.30 a.m. to 4 p.m. A check of the tonnage handled from Sacramento to the points proposed to be served by applicants, taken during the period September 1 to 16, 1927, inclusive, shows the following daily average tonnage transported from Sacramento to the following destinations:

Yolo	874 lbs.	Norman	----
Zamora	510 lbs.	Delevan	92 lbs.
Dunnigan	935 lbs.	Maxwell	3446 lbs.
Arbuckle	5280 lbs.	Williams	6040 lbs.
Totals	7599 lbs.		9578 lbs.

J. A. Robinson, operating a general merchandise store in Williams, testified that he was the largest individual receiver of merchandise in Williams averaging 40 tons monthly in less than carload shipments from Sacramento, and from 18 to 25 carloads per year. Witness has never had occasion to use the service of applicants, all freight shipments being satisfactorily handled by the Southern Pacific Company and the service having been improved during the last two or three years. It is the opinion of this witness that no demand exists for the additional service proposed.

Protestant American Railway Express Company filed as exhibits schedules of rates and train service upon which express transportation was available.

We have fully considered the evidence and exhibits herein. It appears therefrom that applicants propose rates which are in most instances less per hundredweight than those of the American Railway Express Company and service is offered which results in earlier arrival for shipments from Sacramento than is available either by railroad freight or express. Shippers in Sacramento also have the advantage

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of freight being received at a later hour than is possible by the regulations of the Southern Pacific Company. The record herein shows justification for the granting of the certificate sought in conformity with the following order.

ORDER.

A public hearing having been held on the above entitled application, the matter having been duly submitted and the Commission being now fully advised:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by A. E. Mallett and Gene Antichi, copartners doing business under the fictitious name of Sacramento-Corning Freight Line, of an automobile truck service as a common carrier of property, for compensation, between Yolo, Zamora, Dunnigan, Arbuckle, Williams, Maxwell, Delevan and Norman, and between all of said points and all the points between Sacramento and Corning now served by applicants under the authority as contained in this Commission's Decisions Nos. 11071 and 14477 on Applications Nos. 8096 and 9870, as decided October 7, 1922, and January 27, 1925, covering freight truck service between Sacramento and Corning, serving as intermediate points the communities at Willows, Artois and Orland, not as a new and separate operation but in conjunction with and as a part of the operative rights conferred by the decisions hereinabove referred to; and

It is hereby ordered, that a certificate of public convenience and necessity be and the same hereby is granted to A. H. Mallett and Gene Antichi, copartners doing business under the fictitious name of Sacramento-Corning Freight Line, for the operation of an automobile truck service as a common carrier of freight, for compensation, in accordance with the foregoing declaration and subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicants shall file, in duplicate, within a period of not to exceed thirty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed forty-five days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicants herein unless such

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vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order is hereby fixed as twenty days from the date hereof.

Dated at San Francisco, California, this twenty-ninth day of February, 1928.

DECISION No. 19428.

IN THE MATTER OF THE APPLICATION OF THE COLONY WATER COMPANY (A FICTITIOUS NAME), FOR CERTIFICATE TO OWN AND OPERATE A DOMESTIC WATER SYSTEM.

Application No. 14119.

Decided February 29, 1928.

CERTIFICATES—WATER UTILITY.—Application of E. E. Mix (Colony Water Company) for certificate to operate a water system on Tract 8174, Los Angeles County, denied pending installation of adequate facilities.

FRANCHISES—NECESSITY OF OBTAINING.—The use of easements in the rear of lots in installing water mains eliminates the necessity of a county franchise.

CERTIFICATES—GROUNDS FOR REFUSING—IN GENERAL.—A certificate to operate a water system will not be granted where mains are too small, and elevation and capacity of a storage tank are both inadequate to give proper service at reasonable pressure.

E. E. Mix, for Applicant.

BY THE COMMISSION.

OPINION.

In this proceeding, E. E. Mix, operating under the fictitious name of Colony Water Company, asks for a certificate of public convenience and necessity to operate a domestic water system to supply water to the inhabitants of, and the area adjoining, Tract No. 8174, Los Angeles County. The Commission is also asked to establish a minimum charge of $1.50 per month for each dwelling and any additional charges that may be equitable.

A public hearing in this matter was held before Examiner Williams in Los Angeles, after all interested parties had been duly notified and given an opportunity to be present and be heard.

The evidence shows that this water system was installed in 1924 by Mr. Mix to aid in the sale of lots in Tract No. 8174. The contracts given to the purchasers of lots provided for the payment of a monthly water charge of 50 cents per lot for a period of three years, which applied to all lots whether or not water was used. However, only a few consumers paid the charges and collections were not enforced. The three-year period is now ended and applicant desires to engage in the business of supplying water to the public at a rate to be established by the Commission.

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Water is obtained from a 10-inch well, 180 feet in depth, and is lifted by a 2½-inch centrifugal pump into a 3500-gallon tank on a frame tower 20 feet high. The distribution system consists of 2-inch standard screw and welded casing pipe installed on easements at the back of the lots. The use of easements eliminates the necessity of a county franchise to use the streets in Tract No. 8174; however, should the use of streets or roadways become necessary in service outside said tract, such county franchise or other permit may be required. At the present time, there are approximately thirty consumers being served on the tract, with the possibility of a maximum of 105 consumers when the tract is fully built up.

The pumping equipment is located in a small concrete pit that is uncovered and unprotected against storm water. Surface water flows into the pit after every storm and this results in interruptions of service with a serious danger of contamination and pollution of the water supply.

Protest was made by several of the consumers upon the ground that the mains were too small and that the elevation and the capacity of the storage tank are both inadequate to give proper service at a reasonable pressure for the needs of the present water users. The evidence shows these grounds of protest to be well taken and the Commission therefore can not grant a certificate to operate a public utility water system under such circumstances. Applicant has stated his willingness to install whatever improvements may be necessary to satisfy the requirements of the Commission and we will, therefore, by supplemental order, grant such a certificate and establish proper rates to be charged for the service to be rendered, if and when the following improvements have been installed and are in operation in a manner satisfactory to the Commission:

1. A storage tank of a capacity of not less than 10,000 gallons, said tank to be equipped with a proper roof or cover and with suitable wash-out valve in the bottom thereof for cleaning and flushing purposes, and the bottom of said tank shall be at an elevation of not less than thirty-five feet from the natural surface of the ground at point of location.

2. Proper covering and concrete curb, or other method of sanitary protection against surface contamination of the well and pumping pit, approved by the State or County Board of Health.

3. A pipe line not less than six inches in diameter to connect the storage tank with two distribution mains, which latter shall be not less than four inches in diameter to supply Blocks A and C, and B. and D, said distribution mains to be cross-connected at or near McMillan street with a pipe line not less than two inches in diameter.

Upon the completion of these improvements as outlined above, a

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certificate of public convenience and necessity will be granted by supplemental order upon proper application therefor.

The application herein, therefore, will be denied without prejudice.

ORDER.

E. E. Mix, operating under the fictitious firm name and style of Colony Water Company, having made application as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that the above entitled proceeding be and it is hereby denied without prejudice.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-ninth day of February, 1928.

DECISION No. 19436.

PACIFIC STATES BUTTER, EGG, CHEESE AND POULTRY ASSOCIATION

vs.

SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, MODESTO AND EMPIRE TRACTION COMPANY, NORTHWESTERN PACIFIC RAILROAD COMPANY, PACIFIC ELECTRIC RAILWAY COMPANY, PETALUMA AND SANTA ROSA RAILROAD, SACRAMENTO NORTHERN RAILWAY.

Case No. 2230.

Decided March 3, 1928.

REPARATION.—Defendant railroads directed to refund to complainant and Simon Levi Company, intervener, charges collected in excess of those accruing under section 4 of Perishable Protective Tariff No. 3, C. R. C. No. 2 of R. C. Dearborn, agent, during the two years prior to April 14, 1926.

McCutchen, Olney, Mannon and Greene, by *Allan P. Matthew*, for Complainant.
J. E. Lyons, for Defendants.

CARR, *Commissioner.*

OPINION ON REHEARING.

By Decision No. 18587, July 8, 1927, in the above entitled proceeding we found that the practice of defendant carriers in requiring the shippers of butter, eggs, cheese and dressed poultry, in carload lots under refrigeration, to pay either the stated refrigeration charges as set forth in section 2, or the car use and cost of ice and salt basis as set forth in Rule 241 of Protective Tariff No. 3, C. R. C. No. 2, to be unjust and unreasonable and in violation of sections 13 and 19 of the Public Utilities Act. Defendants were directed to establish on or before September 1, 1927, for the refrigeration of these commodities

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between all points in California charges not in excess of those provided for the services of icing and reicing as per section 4 of the said Perishable Protective Tariff, hereafter referred to as the cost-of-ice basis. Complainant's plea for reparation on past shipments was denied.

Defendants published the basis of charges effective September 1, 1927, in Supplement No. 12 to Perishable Protective Tariff No. 3, C. R. C. No. 2. Prior to the effective date thereof they petitioned for a modification of the order and for a rehearing and reargument thereon, which was denied by Decision No. 18967, dated October 25, 1927. Upon petition of complainant the proceeding was reopened solely for the purpose of reconsidering the issue of reparation and for oral argument thereon.

The matter was orally argued January 3, 1928, and the case submitted.

Reparation is sought both on the shipments moving under stated refrigeration charges and on those moving under the so-called Rule 241 charges. As explained in the original decision, the stated charges shown in section 2 of the tariff are in amounts per car, varying from $30 to $55 according to the length of haul and the territory traversed. Under this form of refrigeration the carriers assume the entire burden of furnishing a complete service. The Rule 241 charges are predicated on a modified form of refrigeration available to those shipments requiring an initial icing and no reicing en route. The initial icing may be done by either the carrier at the cost-of-ice basis or by the shipper at his election, but in addition there is a charge of $5 per car if the journey is confined to a single origin group, $7.50 per car if confined to two contiguous origin groups, and in all other cases 20 per cent of the stated charge.

Both complainant and defendants agree that the exact amount of reparation due can not be determined on the shipments moving under stated charges, for there is no method to accurately determine the amount of ice and salt needed for each individual shipment. The record shows that the maximum amount of ice required for the safe refrigeration of these commodities is approximately 9000 pounds, and complainant suggests it would be equitable to accept this as the average amount used, and to award reparation in the difference between this amount and the stated charges paid. Although the evidence of complainant shows that shipments moved safely with a maximum of 9000 pounds of ice, defendants actually furnished more than this amount of ice and performed a completed service, paying in some instances approximately as much for the ice and salt used as they received under the stated charge. As illustrative, The Atchison, Topeka and Santa Fe in moving 44 cars of eggs from groups C and D points to Los Angeles, Riverside and San Diego, used an average of 16,120 pounds

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of ice and 657.13 pounds of salt per car. The actual cost of the ice was $4.41 per ton and the salt 53 cents per 100 pounds, making a total cost of $39.04 per car. The average revenue on these shipments under the stated charge was $39.91 per car. The stated charges, *per se*, were not found to be unjust and unreasonable, the decision only condemning the practice of defendants in requiring shippers to accept either the stated refrigeration or the Rule 241 charges. A full and complete service was here accorded complainant under the regular tariff rates, which for the service rendered have not been shown to be unreasonable; also shippers had the option of using the Rule 241 charges. I am of the opinion that reparation should not be awarded on shipments moving under the stated charges.

With respect to shipments moving under Rule 241 charges, complainant seeks reparation in the amount of the charges of $5 per car, $7.50 per car, or 20 per cent of the stated charge as the case may be, which are in addition to the cost of the ice furnished. These amounts can be accurately determined.

The Rule 241 charges were established by order of the Director General February 28, 1920, just prior to the termination of federal control of railroads. Complainant contends that their establishment at the time when the federal-controlled lines were not under the jurisdiction of any regulatory body was contrary to the previously expressed views of both this Commission and the Interstate Commerce Commission in so far as they were applicable to dairy and poultry products. In *The Matter of Private Cars*, 50 I. C. C. 652, and the *Perishable Freight Investigation*, 56 I. C. C. 449, the Federal Commission approved the cost-of-ice basis for the refrigeration of dairy products. The latter proceeding was instituted at the request of the Director General of Railroads prior to the publication of the National Perishable Protective Tariff, and in considering the cost-of-ice basis and the stated charge the Interstate Commerce Commission said:

> The situation is complicated by the fact that the proposed tariff does not contemplate the abandonment of the cost-of-ice basis, but retains it in section 4 in the case of such important commodities as fresh meats, packing house products, dairy products, fish, shell fish, cereal beverages, bananas, and cocoanuts. Moreover, so far at least as fresh meats, packing house products and dairy products are concerned, this basis of charging was approved by us in *The Matter of Private Cars, supra*, after an investigation in which the respective merits of the stated charge and cost-of-ice basis were considered.

A somewhat similar finding was made by this Commission with respect to shipments of eggs moving from Petaluma to Los Angeles, initially iced and not reiced en route, *Klein-Simpson Fruit Company* vs. *The Atchison, Topeka and Santa Fe Railway Company et al.*, 4 C. R. C. 1001 (May 16, 1914). Complainant also maintains that the transportation characteristics and refrigeration requirements of dairy and poultry products are not materially different from those of fresh

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meats and packing house products, and with respect to these commodities both this Commission and the Interstate Commerce Commission have uniformly held that the Rule 241 charges were unjust and unreasonable; *C. Swanston and Sons* vs. *S. P. Co.*, 12 C. R. C. 590; *Western Meat Co.* vs. *S. P. Co. et al.*, 23 C. R. C. 219; *Westbound Transcontinental Refrigeration Charges*, 34 I. C. C. 140; and *Frye & Company* vs. *Great Northern Railway et al.*, 88 I. C. C. 477; also *The Matter of Private Cars* and *Perishable Freight Investigation*, *supra*, approved the cost-of-ice basis. All of these decisions, it is contended, have placed the carriers on notice that the Rule 241 charges applicable to such commodities as dairy and poultry products were unjust and unreasonable.

Defendants, on the other hand, maintain that following the principles of many decisions reparation should not be awarded where an adjustment is made covering an extensive territory such as here involved and where the charges have been in effect for a long period of time and will affect shippers not of record in this proceeding. The record, however, shows that approximately 90 per cent of the dairy and poultry products tonnage moving in California is on behalf of members of complainant's organization to the central primary markets.

After reconsideration of the entire record in this proceeding in the light of the oral argument, I am of the opinion that reparation should be awarded on shipments moving under Rule 241 charges within two years prior to the filing of the complaint. I am further of the opinion that members of complainant's association and intervener Simon Levi Company paid and bore the charges on the shipments in question and have been damaged in the amount of the difference between the charges paid and those accruing under the section 4 cost-of-ice basis. Reparation should also be paid on shipments moving subsequent to the filing of the complaint.

Complainant should submit statements of the shipments to defendants for check. Should it not be possible to reach an agreement the matter may be referred to this Commission for further consideration and the entry of a supplemental order should such be necessary.

I recommend the following form of order:

ORDER.

This case having been duly argued and submitted, full investigation of the matters and things involved having been had;

It is hereby ordered, that defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, The Western Pacific Railroad Company, Los Angeles and Salt Lake Railroad Company, Modesto and Empire Traction Company, Northwestern Pacific Railroad Company, Pacific Electric Railway Company, Petaluma and Santa Rosa Railroad and Sacramento Northern Railway, according as

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they participated in the transportation, be and they are hereby authorized and directed to refund, with interest at 6 per cent per annum, to members of complainant's organization and to intervener Simon Levi Company according as their interest may appear, who paid and bore the charges on the shipments in question, consisting of butter, eggs, cheese and dressed poultry moving within two years prior to the filing of this complaint and subsequent thereto, initially iced and shipped with instructions do not reice en route, all charges collected under the provisions of Rule 241 of Perishable Protective Tariff No. 3, C. R. C. No. 2 of R. C. Dearborn, agent, or prior and subsequent issues thereof, which are in excess of those accruing under section 4 of said Perishable Protective Tariff No. 3, C. R. C. No. 2 of R. C. Dearborn, agent.

It is hereby further ordered, that in all other respects Decision No. 18587, dated July 8, 1927, shall remain in full force and effect.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this third day of March, 1928.

DECISION No. 19443.

IN THE MATTER OF THE APPLICATION OF UNITED STAGES, INC., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A PASSENGER AUTOMOBILE STAGE AND EXPRESS SERVICE BETWEEN LOS ANGELES AND VENICE, CALIFORNIA, AND INTERMEDIATE POINTS.

Application No. 5269.

IN THE MATTER OF THE APPLICAATION OF COMMUNITY BUS LINES FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERAATE PASSENGER SERVICE BETWEEN RIMPAU AVENUE AND WASHINGTON BOULEVARD, LOS ANGELES, AND WINDWARD AND TROLLEYWAY STREETS, VENICE, CALIFORNIA.

Application No. 10368.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AN AUTOMOBILE PASSENGER STAGE SERVICE BETWEEN THE INTERSECTION OF WEST BOULEVARD AND WEST SIXTEENTH STREET IN THE CITY OF LOS ANGELES, AND THE INTERSECTION OF VENICE BOULEVARD AND TROLLEYWAY IN THE CITY OF VENICE, VIA WASHINGTON BOULEVARD.

Application No. 10406.

Decided March 5, 1928.

CERTIFICATE—PREFERENCE AMONG APPLICANTS.—Pickwick Stages System authorized to operate passenger service between Los Angeles, Culver City, and

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Venice. Applications of Community Bus Lines and Pacific Electric Railway Company denied.

CERTIFICATES—PREFERENCE AMONG APPLICANTS.—Public convenience and necessity having been affirmatively established by the record, the Commission will consider the testimony and exhibits relative to their showing as to the applicant best qualified to render the proposed stage service.

CERTIFICATES—PREFERENCE AMONG APPLICANTS.—A motor transportation company was held to be the applicant best qualified to undertake the proposed service, in that it afforded a rate schedule averaging less than the proposal of applicant electric railway, was well qualified financially, was operating presently authorized lines satisfactorily and without deficit, and in addition, was the prior applicant (26 C. R. C. 892).

H. W. Kidd, N. C. Folsom, S. W. Thompson and *Warren E. Libby*, for Applicant in Application No. 5269 and Protestant in Applications Nos. 10368 and 10406.

Frank Karr, R. C. Gortner, C. W. Cornell, R. E. Wedekind, E. E. Morriss and *O. A. Smith*, for Applicant in Application No. 10406 and Protestant in Applications Nos. 5269 and 10368.

Mark Thompson and *T. A. Woods*, for American Railway Express Company, Protestant in Application No. 5269.

Rex Hardy and *Fred Aberle, Jr.*, and *DeWitt J. Brady*, for Applicant in Application No. 10368 and Protestant in Application No. 10406.

S. M. Haskins, H. G. Weeks, Paul R. Watkins and *R. B. Hill*, for Los Angeles Railway Corporation.

Joss E. Stephens, City Attorney, by *Milton Bryan*, Assistant City Attorney, for City of Los Angeles.

J. O. Marsh, for City of Los Angeles and Board of Public Utilities and Transportation of City of Los Angeles.

P. MacDonniel, for Culver City Transportation Committee.

BY THE COMMISSION.

OPINION.

In Application No. 5269, as amended, United Stages, Inc., a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile stage service as a common carrier of passengers and express between Los Angeles and Venice, California, and intermediate points, over the following route:

> Starting from the corner of Rimpau and Washington streets in the city of Los Angeles, California, at the end of the Washington street car line of the Los Angeles Railway, along Washington boulevard to its intersection with Venice boulevard in the city of Venice, now a part of Los Angeles; thence west over Venice boulevard two blocks to the intersection of Eighteenth avenue: thence over Eighteenth avenue to its intersection with Pacific avenue.

In Application No. 10368, as amended, Community Bus Lines, a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile stage service as a common carrier of passengers between Harcourt street and Washington boulevard, Los Angeles, and Windward avenue and Trolleyway, Venice, and intermediate points.

In Application No. 10406, as amended, Pacific Electric Railway Company, a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile stage line as a common carrier of

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passengers between Los Angeles and Venice, and intermediate points, over the following described route:

> Commencing at the intersection of West boulevard and West Sixteenth street in the city of Los Angeles, thence along West boulevard to Washington boulevard, thence along Washington boulevard to Venice boulevard, thence along Venice boulevard to Trolleyway.

Public hearings were held on Application No. 5069 at Los Angeles and the matter was duly submitted, later being reopened, heard and submitted with applications Nos. 7471 and 7472, and again reopened and consolidated for hearing with applications Nos. 10368 and 10406. Applications Nos. 10368 and 10406 were heard at Los Angeles, having been duly consolidated with Case No. 2025, and were submitted, later being reopened and combined with Application No. 5269 for further hearing. The consoliated applications Nos. 5269, 10368 and 10406 were duly submitted on briefs and are now ready for decision.

In Application No. 5269, as amended, United Stages, Inc., alleges that no stage service is rendered over the proposed route; that the service of the present rail carrier, Pacific Electric Railway Company, is slow and inadequate; that the proposed service will be more expeditious; that the rates proposed are lower than those at present charged by Pacific Electric Railway Company; that transportation will be provided for sections not now served by public transportation; and that many inquiries have been made of applicant to establish the proposed service. Applicant proposes to charge rates on a zone system between Rimpau and Washington boulevard and Venice in accordance with the schedule filed as amended Exhibit "A," to operate on a twenty-minute headway between the hours of 6 a.m. and 7 p.m., and thereafter on a thirty-minute headway until 12 midnight, such service to be given daily with an additional schedule leaving each terminal on Saturdays and Sundays at 12.30 a.m.; and to use as equipment six Pierce-Arrow intercity type stages, each of thirty-three-passenger capacity, together with such other and further equipment as may be required and warranted by traffic conditions.

In Application No. 10368, as amended, Community Bus Lines, a corporation, proposes to establish service between Rimpau avenue and Washington boulevard, Los Angeles, and Windward street and Trolleyway, Venice, and intermediate points, charging fares on a zone system in accordance with Exhibit A-1 as filed with the amended application; to operate on a twenty-minute headway between the hours of 6 a.m. and 7 p.m., and thereafter on a thirty-minute headway until midnight, such operation to be given daily, excepting Saturdays and Sundays when an additional schedule will leave each terminal at 12.30 a.m.; and to use as equipment four street-car-type busses of standard make, each with a seating capacity of twenty passengers and with reserve

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equipment consisting of two seven-passenger Cadillac touring cars.

This applicant relies as justification for the granting of the desired certificate on the following alleged facts: That the present service rendered by the Pacific Electric Railway only serves people in districts where their property or homes are contiguous to or are located near said railway; that the residents of the community located to the south and west of Washington boulevard are without means of transportation and have no facilities excepting the service proposed to be rendered; that the community south and west of Washington boulevard and extending to and including Culver City is densely populated, is increasing in population, and an additional transportation service as proposed by applicant is required; and that the transportation service of the Pacific Electric Railway Company does not give frequent and adequate service to Culver City, Palms, and the rural communities located in their vicinity in that the service of such railway is half-hourly whereas applicant proposes a twenty-minute service and in addition will serve patronage not reached by said railway.

In Application No. 10406, as amended, applicant Pacific Electric Railway Company proposes to operate an automobile stage service for the transportation of passengers between the intersection of West boulevard and Sixteenth street in the city of Los Angeles (at the end of Pacific Electric West Sixteenth street-Vineyard line) and the intersection of Venice boulevard and Trolleyway in the city of Venice, giving through service between said points and local service to the intermediate points.

Applicant proposes to charge rates in accordance with a schedule marked Exhibit "A" as attached to and forming a part of the application herein; to operate on a scheduled twenty-minute headway between the hours of 6 a.m. and 7 p.m. and thereafter on a thirty-minute headway until 11 p.m.; and to use as equipment six standard-make street-car type stages, each of 29-passenger capacity, five of which will be in regular service and one as spare equipment. Applicant relies as justification for the granting of the desired certificate on the following alleged facts: That there are no other authorized common carriers with whom the proposed operation would compete except the electric interurban line of this applicant; that a genuine need for regular service exists in the territory traversed by the proposed route; that many new subdivisions have been opened and placed on the market resulting in a large building development; that there is no present authorized transportation service along the proposed route; that applicant proposes to establish bus service and to augment the same as the future development will require, connecting with its rail lines known as the West Sixteenth street-Vineyard line in Los Angeles and giving transfer

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privileges between the proposed bus line and existing street railway lines, together with applicants Pico boulevard bus line, within the local fare limits of Santa Monica-Ocean Park-Venice as such limits are named in applicant's local passenger tariff No. 816, C. R. C. No. 1000.

Pickwick Stages System, a corporation, having succeeded to the rights of applicant United Stages, Inc., was substituted as applicant in Application No. 5269.

During the earlier hearings on Application No. 5269 the Pacific Electric Railway Company protested the granting of a stage service over the route herein considered on the basis that the service and facilities of the rail line of such protestant was adequate and fully responsive to the needs of any traffic which might originate on the proposed route. By reason of the protestant Pacific Electric Railway Company filing its application No. 10406, which has been consolidated herein with applications Nos. 5269 and 10368, no useful purpose would be served by reference to the evidence or exhibits offered in support of such protest, all the applicants in the consolidated proceedings requesting substantially the same certificate. It may be stated, however, that a number of witnesses testified on behalf of applicant United Stages, Inc., and that some of the witnesses called by Pacific Electric Railway Company in support of its protest, while being unfavorable to the granting of the United Stages application, commented adversely on the rail service as rendered by Pacific Electric Railway Company.

The public necessity and convenience to be served by the proposed operation of an automobile stage line on Washington boulevard is fully established by the testimony of four residents and business men of Los Angeles, twenty-one of Venice, eleven of Culver City and three of the territory lying between Culver City and Venice. In addition, by stipulation, the testimony of six residents of Culver City, seventeen in the territory between Culver City and Venice, and fifty-one residing at various points on the proposed route were to be considered as favoring the establishment of a stage line along the proposed route. Mr. J. Ogden Marsh, general manager of the Board of Public Utilities and Transportation of the city of Los Angeles, endorses the establishment of a proposed service as also did the testimony of Mr. P. MacDonniel, the secretary of Culver City Transportation Committee, said committee representing the Board of Trustees of Culver City, Culver City Chamber of Commerce, Culver City Realty Board, the Business Women's Club, the Women's Club, Lions Club, Exchange Club, Walnut Annexation District Civic Improvement Club, and Venice Chamber of Commerce, and in general, by such organizations, 20,000 residents in the district between Venice boulevard and Hollywood-Redondo boulevard, Washington boulevard passing through the center of this district

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and development. The establishment of a bus line is also favored by the Santa Monica-Ocean Park Chamber of Commerce by a resolution duly filed as an exhibit.

Public convenience and necessity having been affirmatively established by the record herein, we will now consider the testimony and exhibits relative to their showing as to the applicant best qualified to render the proposed service.

As to rates the following shows the proposals of the several applicants in accordance with their amended exhibits showing proposed rates:

PICKWICK STAGES SYSTEM.

Proposed Tariff between Los Angeles (Rimpau and Washington boulevard) and Venice.

Zone 1. From end of Washington street yellow car line to junction of Adams street.

Zone 2. From junction of Washington and Adams street to Jasmine avenue or Goldwyn's Studio.

Zone 3. From Jasmine avenue (Goldwyn's Studio) to Atlantic avenue.

Zone 4. From Atlantic avenue to Lincoln boulevard.

Zone 5. From Lincoln boulevard to Venice.

Between zone	*1*	*2*	*3*	*4*	*5*
and					
5 ---	O.W. $0.25	O.W. $0.20	O.W. $0.15	O.W. $0.10	O.W. $0.06
---	R.T. $0.40	R.T. $0.30	R.T. $0.20	R.T. $0.20	----
---	60-ride $7.50	60-ride $5.00	60-ride $4.00	60-ride $3.00	----
4 ---	O.W. $0.29	O.W. $0.15	O.W. $0.10	O.W. $0.06	----
---	R.T. $0.30	R.T. $0.20	----	----	----
---	60-ride $5.00	60-ride $4.00	----	----	----
3 ---	O..W $0.15	O.W. $0.10	O.W. $0.06	----	----
---	R.T. $0.20	----	----	----	----
---	60-ride $4.00	60-ride $3.00	----	----	----
2 ---	O.W. $0.10	O.W. $0.06	----	----	----
---	60-ride $3.00	----	----	----	----
1 ---	O.W $0.06	----	----	----	----

Exception—Fares between Main street, Culver City, and Venice one way, 15 cents; round trip, 25 cents.

60-ride books to be good for 45 days from date of sale.

COMMUNITY BUS LINE.

Proposed tariff between Los Angeles (Rimpau and Washington boulevard) and Venice.

Zone 1. From end Washington street car line to junction of Adams street.

Zone 2. From junction of Adams street to Jasmine avenue or Goldwyn's Studio.

Zone 3. From Jasmine avenue (Goldwyn's Studio) to Atlantic avenue.

Zone 4. From Atlantic avenue to Lincoln boulevard.

Zone 5. From Lincoln boulevard to Venice.

Between zone	*1*	*2*	*3*	*4*	*5*
and					
5 ---	O.W. $0.25	O.W. $0.20	O.W. $0.15	O.W. $0.10	O.W. $0.05
---	R.T. $0.40	R.T. $0.30	----	----	----
---	60-ride $7.50	60-ride $5.00	----	----	----
4 ---	O.W. $0.20	O.W. $0.15	O.W. $0.10	O.W. $0.05	----
---	----	R.T. $0.20	----	----	----
3 ---	O.W. $0.15	O.W. $0.10	O.W. $0.05	----	----
---	R.T. $0.20	----	----	----	----
2 ---	O.W. $0.10	O.W. $0.05	----	----	----
---	60-ride $3.00	----	----	----	----
1 ---	O.W. $0.05	----	----	----	----

Exception—Fare between Zone 5 and Main street, Culver City one way, 15 cents; round trip, 25 cents.

60-ride books to be good for 45 days from date of sale.

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PACIFIC ELECTRIC RAILWAY COMPANY.

Proposed Fares.

Between and	Class of fare	Vineyard	Edgemar avenue	Adams street junction	Culver City	Sawtelle boulevard
Edgemar avenue	O.W.	$0.06				
Adams street Junction	O.W.	$0.11	$0.06			
	R.T.	$0.15				
	10-ride	$0.71				
	Family	$1.95				
	School	$2.99				
	Weekday	$3.51				
	Monthly	$3.90				
	60-ride	$3.90				
Culver City						
	O.W.	$0.17	$0.11	$0.06		
	R.T.	$0.24	$0.13			
	10-ride	$0.95				
	Family	$2.19				
	School	$2.99				
	Weekday	$3.51				
	Monthly	$3.90				
	60-ride	$3.90				
Sawtelle road						
	O.W.	$0.20	$0.14	$0.10	$0.06	
	R.T.	$0.30	$0.20	$0.14		
	10-ride	$1.22				
	Family	$2.90				
	School	$3.05				
	Weekday	$3.58				
	Monthly	$3.98				
	60-ride	$4.58				
Grand View boulevard	O.W.	$0.23	$0.17	$0.12	$0.06	$0.06
	R.T.	$0.34	$0.24	$0.18		
	10-ride	$1.39				
	Family	$3.35				
	School	$3.53				
	Weekday	$4.14				
	Monthly	$4.60				
	60-ride	$5.29				
Wade street						
	O.W.	$0.24	$0.18	$0.13	$0.08	$0.06
	R.T.	$0.36	$0.26	$0.20	$0.13	$0.06
	10-ride	$1.51			$0.65	
	Family	$3.06			$1.95	
	School	$3.85			$2.99	
	Weekday	$4.53			$3.51	
	Monthly	$5.03			$3.90	
	60-ride	$5.78			$3.90	
Lincoln boulevard	O.W.	$0.27	$0.21	$0.16	$0.11	$0.07
	R.T.	$0.40	$0.32	$0.25	$0.19	$0.12
	10-ride	$1.57			$0.72	
	Family	$4.06			$1.95	
	School	$4.29			$2.99	
	Weekday	$5.04			$3.51	
	Monthly	$5.60			$3.90	
	60-ride	$6.44			$3.90	
Venice						
	O.W.	$0.33	$0.27	$0.22	$0.17	$0.13
	R.T.	$0.50	$0.40	$0.32	$0.27	$0.21
	10-ride	$2.13	$1.78	$1.42	$1.19	$0.91
	Family	$5.30	$4.68	$3.74	$3.12	$2.40

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Proposed Fares.

Between and	Class of fare	Vineyard	Edgemar avenue	Adams street junction	Culver City	Sawtelle boulevard
Venice						
	School	$5.57	$4.91	$3.92	$3.27	$2.99
	Weekday	$6.53	$5.77	$4.61	$3.83	$3.51
	Monthly	$7.26	$6.41	$5.12	$4.26	$3.90
	60-ride	$8.35	$7.37	$5.89	$4.90	$3.90

Between and	Class of ticket	Grand View avenue	Wade street	Lincoln boulevard
Venice	O.W.	$0.11	$0.10	$0.06
	R.T.	$0.17	$0.15	
	10-ride	$0.74	$0.65	
	Family	$1.95	$1.95	
	School	$2.99	$2.99	
	Weekday	$3.51	$3.51	
	Monthly	$3.90	$3.90	
	60-ride	$3.90	$3.90	

10-ride ticket is for individual purchaser, limited to use within 30 days from date of sale.

Family ticket is good for purchaser, his wife or her husband, his or her dependent children, his or her household servants, and such relatives as permanently reside with and are supported by the purchaser. Limit 90 days from date of sale.

School tickets contain 40 rides, are for students under 18 years of age, attending public schools, and are honored for transportation only between the hours of 6 a.m. and 6 p.m. on regular school days. Will not be accepted on Saturdays, Sundays or certain designated legal holidays. Limit, school term for which sold for 40-ride tickets and 60 days from date of sale on 46-ride tickets.

Weekday commutation tickets are good for individual purchaser for two rides each weekday (excepting Sundays) during calendar month for which sold.

Monthly commutation tickets are good for individual purchaser, two rides daily, for calendar month in which sold.

60-ride commutation tickets are good for individual purchaser, and for 40 days from date of sale.

The fares proposed by applicant Pacific Electric Railway Company are those now in effect on its rail line, and include transfers to local rail service in Venice, Santa Monica and Ocean Park and to the bus service of this applicant in the same communities. No transfer is proposed to the street car service of applicant in Los Angeles, the termination of the line being at Vineyard.

The principal traffic to be served is between the end of the Washington street car line in Los Angeles and Venice and Culver City, and between Culver City and Venice and a comparison of the proposed rates of applicants is as follows:

Between Los Angeles (end of Washington street car line)		Pickwick Stages system	Community bus lines	Pacific Electric Railway Co.
and Culver City				
	One way	$0.10	$0.10	$0.17
	Round trip	$0.20	$0.20	$0.24
	60-ride	$3.00	$3.00	$3.90
and Venice				
	One way	$0.25	$0.25	$0.35
	Round trip	$0.40	$0.40	$0.50
	60-ride	$7.50	$7.50	$8.35
Culver City and Venice				
	One way	$0.15	$0.15	$0.17
	Round trip	$0.25	$0.25	$0.27
	60-ride	$5.00	$5.00	$4.90

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The rates proposed by applicants Pickwick Stages System and Community Bus Lines average materially lower than those proposed by Pacific Electric Railway Company, the latter company contending that it is impossible to conduct the service at the rates proposed by the other applicants.

The equipment proposed to be operated by applicant Pickwick Stages System consists of auto busses of either 27 or 33 passengers capacity, using double-deck busses if the same should be demanded by traffic conditions, and for emergency loads or rush days the reserve equipment of this carrier is available together with equipment available for lease from sight-seeing and other uncertificated operators. Applicant Pacific Electric Railway Company proposes to use busses of the Fageol safety type with seating capacity of 29, using five busses regularly with one as a spare and for rush days or emergencies has available the excess equipment on its other bus lines, there being 120 busses of various types under its ownership and control. Community Bus Line has at present available for the service one Cadillac 7-passenger car which is used on the Culver City local run. This applicant proposes, in the event of its application being granted, to purchase from six to eight busses preferably of a type equipped with General Motors products. The proposed equipment of all applicants would appear to satisfactorily meet the operating necessities of the line, two of the applicants having equipment with which service could be immediately inaugurated.

As to the ability of the respective applicants to successfully conduct the proposed service and their record and experience in this method of public transportation:

Pickwick Stages System was organized in August, 1917, and is the successor of Pickwick Stages, Northern Division, Inc., and the lines formerly operated by West Coast Transit Co., Shasta Transit Co., and United Stages, Inc. Operations are conducted in the states of California, Oregon, Arizona, New Mexico and Texas, in both through and local service. This applicant reports as of December 31, 1926, assets amounting to $3,340,050 and a profit from its 1926 operations of $141,145; 244 passenger cars are owned with passenger capacity ranging from 8 to 33 seats. During 1926 the average revenue per passenger car-mile was 25.59 cents and the expense per car-mile was 22.85 cents.

Community Bus Lines is controlled by Mr. Dewitt J. Brady, an automobile dealer of Culver City. Mr. Brady interested himself in the operation of local bus lines at Culver City in an endeavor to secure more adequate transportation between the end of the Washington street car line in Los Angeles and Culver City. The record shows Mr. Brady to be willing to personally advance the necessary funds to establish the service herein proposed by Community Bus Line, although

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he has not heretofore had experience in the operation of bus lines, other than the local line now operating in Culver City under franchise from such municipality.

Pacific Electric Railway Company has for some years been engaged in the operation of auto stage lines as feeders to its interurban lines, in city service, in substitution for rail service, and in some instances by independent lines not paralleling its rail lines. According to the testimony and exhibits herein the applicant now owns 120 busses, and no additional equipment will require to be purchased. The results from bus operation have not been remunerative as shown by the following data compiled from exhibits:

	Year ending Dec. 31, 1926	*Three months ending March 31, 1927*
Auto-bus operation revenue	$627,588 38	$60,427 75
Auto-bus operation expenses	731,420 44	61,988 15
Net auto-bus operation loss	$103,832 06	$1,500 40
Depreciation	$199,795 90	$15,381 10
Taxes	42,100 97	3,735 52
Total depreciation and taxes	$241,896 87	$19,116 62
Auto-bus operating loss	$345,728 93	$20,617 02
Average earnings per bus-mile	15.62 cents	17.29 cents
Average expenses per bus-mile	24.24 cents	23.18 cents

Applicant contends that the revenues shown should be increased by the amounts received as subsidies under arrangement with real estate and other interests, the record showing approximately $1,066 per month as being received from such source. It is also contended that the method used in computing depreciation as reflected in the foregoing figures is susceptible of revision resulting in lesser amounts being properly chargeable to such account. Conceding both the amounts received as donations or bonuses and the revised system of depreciation, the bus operation of Pacific Electric Railway Company is conducted at a material operating loss and renders no return on the investment.

After full consideration of the record herein and the showing appearing as to the ability of the respective operators to conduct the proposed service we are of the opinion that Pickwick Stages System is the applicant best qualified to undertake the proposed service in that it offers a rate schedule averaging less than the proposal of Pacific Electric Railway Company, is well equipped financially and by years of experience is operating its presently authorized lines satisfactorily and without deficit. In addition, Pickwick Stages System by its succession to the application of United Stages, Inc., is the prior applicant in these proceedings. Under the principle enunciated by this Commission's Decision No. 15276 on applications Nos. 9916, 9943 and 9954, as decided August 10, 1925, (Opinions and Orders C. R. C. 26, 892) "all other

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things being equal the applicant first to the docket should receive the reward due to his diligence." In these proceedings, however, as hereinabove stated, there are other and substantial reasons for the granting of the certificate to applicant Pickwick Stages System.

Los Angeles Railway Corporation protests the granting of the application in so far as it proposes the carriage of local passengers between the end of its Washington street car line and Hines avenue. This protestant under the authority of the Board of Public Utilities of the city of Los Angeles commenced operation on October 5, 1925, of a bus line from the end of its Washington street car line to the end of its Adams street car line, running on Washington street from Rimpau avenue to Clyde avenue.

On November 25, 1925, the service was extended to Genesee street, and on November 15, 1926, following the completion of sewer work on Adams street, the bus line was extended to the end of the Adams street car line. The service is on a 15-minute headway during the day with 20-minute headway at night, operation being given between the hours of 5.45 a.m. to 11 p.m., making approximately 140 trips per day and requiring the use of two units of equipment. It is proposed to change the route of this bus line to Hines avenue, some 800 feet west of Genesee street, for the reason that Genesee street is not paved and there are additional patrons who would be served by such rerouting, and supplemental application No. 13042 was filed with the Commission on May 27, 1927, requesting such rerouting. The revenue received from the operation of this bus line during the month of January, 1927, amounted to $840.40 and the out-of-pocket operating expenses, including depreciation, amounted to $1,826.24. The number of passengers carried on the Adams street portion of this service amount to approximately 16 per cent of the total transported, the remaining 84 per cent being carried on the Washington street portion. If the operation sought by applicants herein is granted to include local service between the end of the Washington street car line and the junction of Adams street (or Zone 1 as shown in the proposed rates of Pickwick Stages System and Community Bus Lines) protestant will be obliged to request an abandonment of its nonprofitable bus operation connecting its Washington and Adams street car lines, such service having been established at the request of property owners and having been approved by the Board of Public Utilities and Transportation of the city of Los Angeles. Mr. J. O. Marsh, general manager and chief engineer of said board, testified in behalf of this protestant and gave the opinion of such body as being favorable to the continuance of this bus service and not desiring any service which would result in its withdrawal or curtailment. We are of the opinion that the protest has merit and should be sustained and the order herein will provide for the elimina-

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tion of any local carriage of passengers in the district between the end of the Washington street car line and the junction of Washington boulevard and Adams street.

No evidence having been presented justifying the carriage of express matter between Venice and Los Angeles, the certificate authorized by the accompanying order will be confined to the carriage of passengers only.

ORDER.

Public hearings having been held on the above entitled applications which were consolidated for the receipt of evidence and for decision, the matters having been duly submitted following the filing of briefs, the Commission being now fully advised and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Pickwick Stages System, a corporation, of an automobile stage line as a common carrier of passengers only, for compensation, between the end of the Los Angeles Railway Corporation's Washington street car line at the intersection of Rimpau street and Washington boulevard in the city of Los Angeles and Eighteenth avenue and Pacific boulevard in the city of Venice, and intermediate points over and along the following route:

Commencing at the intersection of Washington boulevard and Rimpau street in the city of Los Angeles (the end of the Los Angeles Railway Washington street car line); thence along Washington boulevard to its intersection with Venice boulevard in the city of Venice, now a part of the city of Los Angeles; thence west on said Venice boulevard to Eighteenth avenue; thence over Eighteenth avenue to its intersection with Pacific avenue.

It is hereby ordered, that a certificate of public convenience and necessity be and the same hereby is granted to Pickwick Stages System, a corporation, for the operation of an automobile stage line as a common carrier of passengers only, for compensation, over and along the route as specifically set forth in the foregoing declaration, and subject to the following conditions:

1. No passengers shall be carried locally in the territory comprised in the portion of the route between the intersection of Rimpau street and Washington boulevard and the intersection of Washington boulevard and Adams street.

2. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

3. Applicant shall file, in duplicate, within a period of not to exceed thirty days from the date hereof, tariff of rates and time schedules,

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such tariffs of rates and time schedules to be those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

The Railroad Commission of the State of California hereby declares that public convenience and necessity do not require the operation by Community Bus Lines, a corporation, of an automobile stage service as a common carrier of passengers between Harcourt street and Washington boulevard, Los Angeles, and Windward avenue and Trolleyway, Venice, and intermediate points, and

It is hereby ordered, that Application No. 10368 be and the same hereby is denied.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity do not require the operation by Pacific Electric Railway Company, a corporation, of an automobile passenger stage service as a common carrier of passengers between the intersection of West boulevard and West Sixteenth street in the city of Los Angeles and the intersection of Venice boulevard and Trolleyway in the city of Venice via Washington boulevard; and

It is hereby ordered, that Application No. 10406 be and the same hereby is denied.

For all purposes other than hereinabove stated the effective date of this order is hereby fixed as twenty days from the date hereof.

Dated at San Francisco, California, this fifth day of March, 1928.

DECISION No. 19444.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, GRANTING TO APPLICANT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE THE RIGHTS, PRIVILEGE AND FRANCHISE GRANTED BY ORDINANCE NUMBER ONE HUNDRED SEVENTY-EIGHT OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA.

Application No. 14184.

IN THE MATTER OF THE APPLICATION OF ALAMEDA COUNTY GAS COMPANY, A CORPORATION, FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO FURNISH GAS TO MOUNT EDEN, ALVARADO, CENTERVILLE, NEWARK, NILES, IRVINGTON, WARM SPRINGS, MISSION SAN JOSE, DECOTO AND CONTIGUOUS TERRITORY IN ALAMEDA COUNTY AND FOR AN ORDER AUTHORIZING

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THE ISSUE AND SALE OF TWO HUNDRED NINETY-SIX THOUSAND ONE HUNDRED ONE DOLLARS OF ITS CAPITAL STOCK AND THREE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS OF ITS FIRST MORTGAGE BONDS TO FINANCE SUCH CONTEMPLATED IMPROVEMENT.

Application No. 14233.

Decided March 9, 1928.

CERTIFICATE—GAS UTILITY.—Pacific Gas and Electric Company authorized to render gas service in Irvington, Mount Eden, Mission San Jose, Warm Springs and contiguous territory in Alameda County. Application of Alameda Gas Company denied.

SERVICE—DUTY OF UTILITY TO RENDER—IN GENERAL.—A utility owes a duty to that portion of the public which seeks to obtain service as well as to that portion of the public which is already being served. Only until the time of threatened competition shall an existing utility be allowed to put itself in such a position with reference to its patrons that the Commission may find that such patrons are adequately served at reasonable rates (*P. G. & E. Co.* vs. *Great Western P. Co.* 1 C. R. C. 103).

SERVICE—DUTY OF UTILITY TO RENDER—IN GENERAL.—Public utilities must not wait until competition is at their door before improving inefficient service, correcting unreasonable rates, or making necessary extensions.

CERTIFICATES—PREFERENCE AMONG APPLICANTS.—An existing gas utility, being an established institution of undoubted financial responsibility, was granted authorization to operate in certain territory, rather than a new company proposing to charge higher rates, and where doubt existed whether the latter was financially prepared to assume responsibilities involved by the granting of a certificate, although the existing utility made its offer of service only to forestall competition.

C. P. Cutten, for Applicant Pacific Gas and Electric Company.
Fred L. Berry, for Applicant Alameda County Gas Company.

BY THE COMMISSION.

OPINION.

Pacific Gas and Electric Company and Alameda County Gas Company have, respectively, made application to the Railroad Commission for an order declaring that public convenience and necessity require the exercise by each applicant of a franchise granted to it by the board of supervisors of Alameda County to supply gas to certain territory in said county.

A public hearing was held at San Francisco by Examiner Gannon on December 20, 1927, at which time the applications were consolidated and evidence was taken. On January 3, 1928, the matters were submitted on oral arguments.

While the franchises are more or less general as to territory to be served, the application of Pacific Gas and Electric Company specifically sets forth that this applicant desires presently to serve the unincorporated towns of Decoto, Niles, Alvarado, Centerville, Newark and contiguous and intervening territory, while Alameda County Gas Company seeks to serve, in addition to the above area, the towns of Irving-

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ton, Mount Eden, Warm Springs, Mission San Jose and contiguous territory.

Pacific Gas and Electric Company has a gas generating plant in Oakland from whence gas is sent under pressure to Hayward and it is from this point that applicant proposes distribution to the territory herein involved. Service is offered at the rate of $1.22 per thousand cubic feet, which is the prevailing cost to consumers in Hayward and vicinity. The service so offered would not be profitable from a revenue standpoint until the territory undergoes a further substantial development. Applicant offers to supply additional territory in this community as the public necessity may require.

Alameda County Gas Company is a newcomer in the field of public utilities. It proposes to finance this project by the issuance of bonds and stock and stands ready and willing to either erect and equip a generating plant of its own or to purchase gas at wholesale from the Pacific Gas and Electric Company for redistribution. It offers to furnish gas to the consumers throughout this territory at an average cost of $1.64 per thousand cubic feet.

There seems to be no question as to the necessity for the installation of gas service in this territory, though there is some variance between testimony of the two applicants as to the number of prospective consumers. However that may be, we have here a growing community with an acknowledged definite demand for gas service and we have only to determine from the facts before us which applicant is the better equipped to render such service.

Pacific Gas and Electric Company is an established institution of undoubted financial responsibility. The public is assured of its ability not only to initiate the service here proposed but to properly finance to an unlimited degree such improvements and further extensions as the necessities of the territory may from time to time require. On the other hand, we are doubtful whether Alameda County Gas Company is financially prepared at this time to assume the responsibility which the granting of this certificate involves. Moreover, should we grant their application, it would mean that the consumers would be required to pay one-third more for their gas than they would pay to Pacific Gas and Electric Company for the same service.

For these reasons we have come to the conclusion that, all things considered, the public interest will be best served by granting the application of the Pacific Gas and Electric Company.

We are not unmindful of the fact, however, that Pacific Gas and Electric Company did not make this offer of service until competition came knocking at its door. Alameda County Gas Company, recognizing the possibilities afforded in this new field, filed its application for a franchise with the county board of supervisors as early as September,

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1927, a month in advance of Pacific Gas and Electric Company. The Commission has often given expression to its attitude towards the applications of utilities under similar circumstances. In *Pacific Gas and Electric Company* vs. *Great Western Power Company,* decided in 1912 and reported in 1 C. R. C. 103, the principle was announced that only until the time of threatened competition shall an existing utility be allowed to put itself in such a position with reference to its patrons that the Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle it was believed an incentive was held out to existing utilities to voluntarily accord service to which the public is entitled, and to new utilities is held out the incentive to develop new territory.

In subsequent decisions the Commission has reaffirmed the doctrine that public utilities must not wait until competition is at their door before improving inefficient service, correcting unreasonable rates, or making necessary extensions.

A utility owes a duty to that portion of the public which seeks to obtain service as well as to that portion of the public which is already being served. In the case before us there is no question that Pacific Gas and Electric Company made its offer of service only to forestall competition and filed its application for a certificate of public convenience and necessity only when forced to do so. For that reason it can not urge a superior right to serve a territory which it has heretofore shown no disposition to enter. Much as the Commission might look with favor upon the efforts of a new utility to develop an unserved territory we are compelled in this instance, on account of the great disparity in rates and certain elements of financial ability, to grant the application of Pacific Gas and Electric Company.

We will require that Pacific Gas and Electric Company make additional gas main extensions to the remaining centers of population in this territory on a basis at least as liberal as that now held out to the consumers whom it proposes to serve immediately.

ORDER.

Pacific Gas and Electric Company and Alameda County Gas Company having each made separate applications to the Railroad Commission for certificates of public convenience and necessity to exercise certain rights and privileges granted by the county of Alameda in ordinances 178 and 176 respectively, and Alameda County Gas Company having further applied for permission to issue certain bonds and stock as more particularly appears in Application No. 14233, a public hearing having been held and the matters being now ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the exercise by Pacific

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Gas and Electric Company of those rights and privileges granted by Ordinance 178 of the county of Alameda, subject to the following condition:

Pacific Gas and Electric Company shall file with this Commission within fifteen days after date hereof a stipulation agreeing to make initial extensions of its gas mains to the towns of Irvington, Mount Eden, Mission San Jose and Warm Springs on a basis as liberal for each of these localities as holds for the extension which it proposes to immediately construct; and

It is hereby ordered, that the application of Alameda County Gas Company be and the same is hereby denied.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this ninth day of March, 1928.

C. L. SEAVEY,
EZRA W. DECOTO,
W. J. CARR,
Commissioners.

While I concur in the order hereinabove set forth, I do not agree with certain parts of the opinion from which it might be inferred that the Pacific Gas and Electric Company has not met the growing needs of the community it serves. Such in fact is not true. The citation from the *Pacific Gas and Electric Company* vs. *Great Western Company* and the comments thereafter are not justified by either the record or the facts and, in my judgment, should have been omitted from the opinion.

EZRA W. DECOTO,
THOS S. LOUTTIT,
Commissioners.

DECISION No. 19448.

IN THE MATTER OF THE APPLICATION OF LEWIS A. MONROE, AS AGENT FOR W. W. WOOD, OPERATING WARNER-JULIAN AND CUYAMACA TRUCK LINE, FOR AN ORDER GRANTING PERMISSION TO PUBLISH AND FILE NEW LOCAL FREIGHT TARIFF SHOWING CERTAIN COMMODITY RATES, ALSO CLASS RATES, TO BE GOVERNED BY MONROE'S "SHIP BY TRUCK" FREIGHT CLASSIFICATION IN LIEU OF PRESENT TARIFF.

Application No. 13987.
Decided March 10, 1928.

SCHEDULES AND TARIFFS—AUTOMOTIVE TRANSPORTATION.—Application of W. W. Wood to adopt Monroe's "Ship by Truck" freight classification denied.

SCHEDULES AND TARIFFS—IN GENERAL.—Establishment of a comprehensive equitable and uniform rate structure governed by a proper classification is to be desired in the interest of the shipping public and of the carrier. Authoriza-

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tion to adopt a freight classification was denied where financial statements and figures presented were so conflicting and erroneous that the record totally failed to show a justification for the proposed adjustment.

Lewis A. Monroe and *H. J. Bischoff*, for Applicant.

BY THE COMMISSION.

OPINION.

This is an application filed by Lewis A. Monroe, as agent for W. W. Wood, an individual operating an automobile truck line under the fictitious name of the Warner-Julian and Cuyamaca Truck Line, for the transportation of freight between San Diego on the one hand and on the other Warner's Hot Springs, Julian, Cuyamaca and the intermediate points, seeking authority to establish a scale of class rates, first, second, third and fourth classes, to be governed by a uniform freight classification and to establish certain special commodity rates as set forth in the petition. The proposed adjustment will result in both increases and reductions in the present rates.

A public hearing was held before Examiner Geary at San Diego December 14, 1927, and the application having been duly submitted is now ready for an opinion and order.

Applicant's present tariff, C. R. C. No. 1, provides specific rates on a limited number of commodities such as dairy and agricultural products, tanks, oils and stovewood, with all other articles charged the rates provided for "general merchandise." It is contended the present tariff is not sufficient for the movement of a large number of commodities differing widely in their inherent transportation characteristics, is inadequate to meet the transportation requirements, and results in the assessing of inconsistent charges which do not provide sufficient revenue to cover the cost of operation. The proposed adjustment it is claimed will eliminate the inconsistencies now prevailing.

Applicant submitted exhibits showing that the gross revenue for the first eight months of 1927 was $8,442.75 and the operating expense $11,231.27, or a claimed loss of $2,788.52. Included in the expense is an item of $1,130.60 for gas and oil, of which amount $482.34 was charged for the month of August. This amount appears excessive when compared with the average monthly expense for gas and oil for the first seven months of 1927 of but $92.61. Based on the gross receipts, the traffic handled during August was 138 per cent greater than the monthly average for the preceding seven months; hence on this basis gasoline and oil would not have exceeded $220.44 for August and $868.71 for the full eight months. Wages for drivers for the period is set forth as $2,954.62, but this includes $500 for the construction of a terminal depot, therefore this amount is a proper charge to the capital account. Taxes are shown as $1,006.03, including the state gross receipt tax of 5 per cent. During 1926, exclusive of the 5 per cent gross tax, they averaged $10.79 per month, and assuming

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this to be a fair property tax for the first eight months of 1927 it would appear that the amount charged to taxes, including 5 per cent on the gross receipts of $8,442.75, should be approximately $508.45 and not $1,006.03. Depreciation on equipment valued at $10,200 has been charged at the rate of 20 per cent per annum, or $1,360 for the eight months' period. The equipment includes one truck built in 1918 and one built in 1920, purchased by applicant in 1925 for $3,500, thus indicating that these trucks have a longer life than five years and that new trucks should not be depreciated on a 20 per cent basis. Likewise the alleged value of $10,200 for all present equipment is $911.48 in excess of the value stated in applicant's 1926 annual report, although the record indicates no new equipment added in 1927. The maintenance expense also appears excessive. For the eight months' period applicant has charged to this account $1,471.74, or approximately $2,207.64 for a 12 months' period. During the year 1926 in the operation of the same equipment the maintenance expense was $1,479.64.

Based on a check of the traffic moved from June 1 to June 15, 1927, which applicant claims is a representative period, the proposed rates if in effect would have produced an increase in revenue of about $1,633.84 for the first eight months of 1927, or $2,450.76 for the year.

Applicant also claims that the operations during 1926 were conducted at a loss, but the annual report for that year does not bear out this contention. The revenues for 1926 were $15,826.32 and the expenses, including taxes and depreciation but excluding interest, were $13,138.37, a net transportation profit of $2,687.95.

The establishment of a comprehensive, equitable and uniform rate structure governed by a proper classification is to be desired in the interest of the shipping public and of the carrier. It may be that this applicant is entitled to relief, but the financial statements and figures presented are so conflicting and erroneous that the record totally fails to show a justification for the proposed adjustment. Applicant should inaugurate a proper system of accounting in conformity with our rules and regulations and should give study to a more equitable schedule of the class rates.

We must conclude and find that the application should be denied and the proceeding dismissed, without prejudice to the filing of a new application.

ORDER.

A public hearing having been held in the above entitled proceeding, evidence having been submitted by the applicant, and the Commission being fully advised;

It is hereby ordered, that the application of W. W. Wood, operating under the fictitious name of Warner-Julian and Cuyamaca Truck Line,

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to adjust class and commodity rates and adopt Monroe's "Ship-by-Truck" Freight Classification, be and the same is hereby denied, without prejudice.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION No. 19449.

IN THE MATTER OF THE APPLICATION OF MENTONE WATER COMPANY FOR AUTHORITY TO INCREASE THE RATES FOR WATER SUPPLIED TO THE UNINCORPORATED VILLAGE OF MENTONE, AND CONTIGUOUS TERRITORY.

Application No. 14008.

Decided March 10, 1928.

RATES—WATER UTILITY—INCREASE.—Mentone Water Company, serving Mentone and vicinity in San Bernardino County, authorized to increase rates.

Earl D. Finch, for Applicant.
G. L. Nichols, for Consumers.

BY THE COMMISSION.

OPINION.

The Mentone Water Company, a corporation, applicant in the above entitled proceeding, is engaged in the public utility business of supplying water for domestic and irrigation use in and in the vicinity of Mentone, San Bernardino County, California.

Applicant alleges in effect that its present rates, established by this Commission in its Decision No. 14047, dated September 12, 1924, are:

Monthly flat rate for domestic service	$1 75

METER RATES.

Monthly charge for 1500 cubic feet or less	$1 50
For each additional 100 cubic feet, per month	05

that applicant is serving a community adjacent to the city of Redlands; that a large number of the consumers served are people living on small tracts of from one-half to two and one-half acres of land; that the city of Redlands, through its municipal water system is serving in territory adjacent to that of applicant; that applicant is constantly receiving inquiries for explanation as to why its rates differ from those charged by the city of Redlands. The Commission, therefore, is requested to authorize applicant to charge the same schedule of rates now in effect on said municipal water system.

A public hearing in this matter was held before Examiner Williams at Redlands after all interested parties had been duly notified and given an opportunity to appear and be heard.

The water supply of this utility is obtained from the East Lugonia Water Company, a mutual water company in which applicant owns stock entitling it to six miner's inches continuous flow, one miner's

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inch being the equivalent of 1/50 second-foot. Connection for stand-by purposes is also maintained with a well and pumping plant owned by G. W. Royce. Delivery is received from the East Lugonia system to the Mentone Water Company's reservoir, from which the water is distributed by gravity through approximately 30,750 feet of mains ranging from eight to one inch in diameter. The average number of consumers during the year 1927 was 133, or approximately 231 feet of main per consumer. The system is one hundred per cent metered.

D. H. Harroun, one of the Commission's hydraulic engineers, presented a report in which the estimated original cost of the physical properties as of December 31, 1927, was found to be $19,544, the depreciation annuity $356 and the estimated reasonable cost of maintenance and operation for the immediate future $2,221.

The operating revenues and expenses as shown by this company's annual reports to the Railroad Commission for the years 1925 and 1926 are as follows:

	1925	1926	1927 Dec. 1, 1926 to Dec. 1, 1927
Revenues	$1,977 00	$2,695 00	$3,563 00
Expenses	1,090 00	1,452 00	
Difference	$887 00	$1,243 00	
Depreciation carried by company	590 00	687 00	
Net revenues	$297 00	$556 00	
Depreciation—Commission's engineer	$260 00	300 00	

Analysis of the records of operating expenses kept by the utility indicates that the charges as set out above are incompete and that the amount charged to depreciation is unreasonably large. Using the figures presented by the Commission's engineers, the operations for the year 1927 will result in a net return slightly in excess of 5 per cent on the invested capital of $19,544.

Although there was no objection made at the hearing to an increase in rates and it is apparent that a slight adjustment of the company's rate schedule is not unreasonable, yet it is clear that the rates charged by the city of Redlands are not wholly applicable to this system and would result in an unwarranted increase in the cost of water to the consumers for domestic service on the utility's system. The minimum monthly charge for domestic service will remain unchanged but the quantity rates in excess of the 1500-foot monthly minimum quantity will be modified to permit competition with the rates charged for irrigation purposes by adjacent systems.

ORDER.

Application having been made to this Commission as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises:

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It is hereby found as a fact that the rates now charged by the Mentone Water Company, a corporation, for water supplied to its consumers in and in the vicinity of Mentone, San Bernardino County, are unjust and unreasonable in so far as they differ from the rates herein established and that the rates herein established are just and reasonable rates to be charged for the service rendered.

Basing its order on the foregoing findings of fact and upon the further statement of facts contained in the opinion which precedes this order;

It is hereby ordered, that the Mentone Water Company, a corporation, be and it is hereby authorized to file with this Commission within twenty days from the date of this order, the following schedule of rates to be charged for all service rendered on and after the first day of April, 1928.

MONTHLY FLAT RATE.

Domestic service	$1 75

METER RATES.

Monthly meter quantity rates.	
From 0 to 1500 cubic feet	$1 50
Next 13,500 cubic feet, per 100 cubic feet	08
All in excess of 15,000 cubic feet, per 100 cubic feet	03½
Monthly minimum meter charges.	
⅝- or ¾-inch meter	$1 50
1-inch meter	2 00
1½-inch meter	2 50
2-inch meter	4 00
3-inch meter	10 00
4-inch meter	12 50

Each of the foregoing monthly minimum charges will entitle the consumer to the quantity of water which that minimum will purchase at the "monthly minimum meter charges" set out above.

For meters 2 inches or larger, the consumer shall pay the reasonable cost thereof, including installation.

It is hereby further ordered, that the Mentone Water Company, a corporation, be and it is hereby directed to file with this Commission, within thirty days from the date of this order, rules and regulations governing the service of water to its consumers, said rules and regulations to become effective upon their approval by the Railroad Commission.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION No. 19451.

IN THE MATTER OF THE APPLICATION OF SAN JUAN WATER COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE OF SHARES OF ITS CAPITAL STOCK IN EXCHANGE FOR REAL AND PERSONAL PROPERTY.

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Application No. 14352.
Decided March 10, 1928.

SECURITY ISSUES—STOCK.—San Juan Water Company authorized to issue $39,900 of common stock to Capistrano Beach Company, and $59,800 of common stock to Title Insurance and Trust Company in payment for properties.

SECURITY ISSUES—EVIDENCE OF INDEBTEDNESS—MORTGAGE.—The purchase of property subject to a mortgage amounts to an assumption of the indebtedness, and such an assumption should be authorized by the Commission.

BY THE COMMISSION.

OPINION.

San Juan Water Company asks permission to issue $99,700 of its common capital stock to the Title Insurance and Trust Company and Capistrano Beach Company in payment for certain water properties located in and about the townsite of San Juan-by-the-Sea,, Orange County.

The San Juan Water Company has an authorized capital stock of $100,000 divided into 1000 shares of the par value of $100 each. Stock in the amount of $300 has heretofore been issued to qualify directors. The company now asks permission to issue $39,900 of its common stock to the Capistrano Beach Company and $59,800 to Title Insurance and Trust Company as trustee for the Dana Point Syndicate in payment for the properties described in Exhibit "A" filed in this proceeding.

Under the authority granted by the Commission in Decision No. 17344, dated September 17, 1926, the San Juan Water Company acquired the public utility water properties of Aaron Bucheim. By Decision No. 18831, dated September 27, 1927, the company was given a certificate of public convenience and necessity permitting it to operate in the territory described in Ordinance No. 246 of Orange County and in the additional adjacent territory specified in the agreement filed in this proceeding as Exhibit "A."

There has been filed as Exhibit No. 2 an appraisal, prepared by J. B. Lippincott, of the properties which the San Juan Water Company asks permission to acquire. A summary of the appraisal shows the following:

Properties acquired and constructed by San Juan Water Company with funds advanced by Capistrano Beach Company	$44,045 00
Lands, well sites and tanks agreed to be conveyed by Capistrano Beach Company	4,500 00
Proposed value of wells, pumps and water distributing system in the Title Insurance and Trust Company properties	70,515 00
Reservoir sites, tanks, pumping plant sites and other land agreed to be conveyed by Title Insurance and Trust Company	5,250 00
Equity in 20-acre Daneri place	10,800 00
Water rights	44,000 00
Total	$179,110 00

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There are at present only fifty-six services connected with the water systems. The water properties are situated in new subdivisions.

An analysis of the appraisal shows that the engineer used the actual cost of the properties in approximately 90 per cent of the items of property mentioned in the report, and in the remaining 10 per cent he estimated the cost of the property mentioned. The figures above referred to are the depreciated actual or estimated cost figures.

Counsel for applicant at the hearing stated that applicant would not construe the granting of this application as a determination of the value of the water rights which might be acquired by applicant, and that this proceeding would not be referred to in any future rate case as the determination of the value of such rights.

The agreement filed as Exhibit "A" provides that the Title Insurance and Trust Company and the Capistrano Beach Company purchase at not exceeding $1,800 an acre twenty acres of land known as the "Daneri place" and make an initial payment of $10,800. The balance is to be secured by a trust deed or mortgage. After the execution of such trust deed or mortgage the property was to be transferred to applicant subject to the mortgage. The total net cost of the property is $32,000. It was agreed at the hearing that in order to retain this property, San Juan Water Company will have to pay when due the note secured by the mortgage. This being the case, we believe that the purchase of the property subject to the mortgage amounts to an assumption of the indebtedness and that therefore such assumption should be authorized by the Commission.

It also developed at the hearing that at the present time no wells are located on the "Daneri place" and that there is no immediate intention to drill any wells on such property. It is being purchased as a reserve source of water supply in the event that the wells nearer the ocean become salty.

It will be observed that the actual or estimated cost of the properties is considerably in excess of the amount of stock which applicant asks permission to issue. The testimony shows that the properties which the San Juan Water Company intends to acquire will be acquired free and clear of any liens or encumbrances, except the mortgage mentioned, in exchange for the $99,700 of common stock. Neither will there appear on the books of the San Juan Water Company any amount due to vendors as an open account indebtedness.

ORDER.

San Juan Water Company having asked permission to issue $99,700 of its common capital stock and to assume indebtedness, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required for the

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purpose specified in this order and that such purpose is not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that the San Juan Water Company be and it is hereby authorized to issue on or before August 1, 1928, at not less than par, not exceeding $39,900 par value of its common capital stock to the Capistrano Beach Company or its nominee or nominees and not exceeding $59,800 par value of its common capital stock to the Title Insurance and Trust Company or its nominee or nominees in full and complete payment for the properties which said companies have agreed in Exhibit "A" to transfer to San Juan Water Company and which are described in this application, provided that San Juan Water Company may assume the mortgage on the property referred to herein as the "Daneri place."

It is hereby further ordered, that the San Juan Water Company shall pay the minimum fee required by section 57 of the Public Utilities Act, which fee is $25, and that San Juan Water Company shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

It is hereby further ordered, that the authority herein granted will become effective ten days after the date hereof.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION No. 19452.

IN THE MATTER OF APPLICATION OF TANNER MOTOR LIVERY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AN AUTOMOBILE SIGHT-SEEING SERVICE IN AND AROUND PASADENA, CALIFORNIA.

Application No. 14431.

Decided March 10, 1928.

CERTIFICATE—SIGHT-SEEING OPERATION.—Tanner Motor Livery authorized to operate sight-seeing service in and about Pasadena.

BY THE COMMISSION.

OPINION AND ORDER.

The above entitled proceeding is an application by Tanner Motor Livery, a corporation, for a certificate of public convenience and necessity to operate an automobile sight-seeing service in and around Pasadena.

Applicant proposes to charge rates and to give service in accordance with the rates and schedules and rules and regulations shown in Exhibits A and B, both of which exhibits are attached to the applica-

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tion herein and made a part thereof. The equipment proposed to be used is set forth in Exhibit C which is also attached to the application herein and made a part thereof.

C. C. Tanner (president of the applicant corporation and its principal stockholder) operates at Los Angeles and Pasadena an automobile service furnishing automobile service to the guests of the leading hotels in both cities. As an individual, operating under the fictitious name of the Tanner Motor Tours, he holds a certificate from the Railroad Commission for the operation of sight-seeing services in and around Los Angeles; between Los Angeles and San Diego; Los Angeles and Riverside and Los Angeles and Santa Barbara. He is also operating under authority of the Commission a passenger and baggage service between the piers of the Dollar Steamship Line on Terminal Island and the metropolitan district of the city of Los Angeles. The Tanner Motor Tours, by Decision No. 18908 on Application No. 14110, was authorized to purchase the sight-seeing service in southern California formerly conducted by the Golden State Auto Tours.

Tanner has a working arrangement with eastern tourist agencies, and travel bureaus, as well as with Los Angeles tourist agencies, hotels and others, for the handling of tourists in sight-seeing services in southern California. In connection with this branch of applicant's activities, as well as in supplying automobile livery service to the larger Pasadena hotels, frequent requests are made for sight-seeing trips in and around Pasadena, and it is in response to requests of this character, the applicant declares, that this application is filed.

The Pacific Electric Railway and Pasadena Ocean Park Stage Line, Inc. (Mt. Wilson Division), carriers now operating in part of the territory proposed to be served, according to applicant, have declared they do not oppose the granting of the certificate asked for. Attached to the application herein is a copy of a letter from the Pasadena Ocean Park Stage Line, Inc., to that effect.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

Tanner Motor Livery is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Tanner Motor Livery, a corporation, of an automotive sight-seeing service, with

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Pasadena as the single terminus, over and along the following route:

Leaving Maryland Hotel, north on Euclid to Walnut; west on Walnut to Garfield; south on Garfield to Green; west on Green to Pasadena avenue; north on Pasadena to Colorado; west on Colorado to Orange Grove; north on Orange Grove to Arroyo Terrace; south on Grand to Maylin; east on Maylin to Orange Grove; south on Orange Grove to Madeline drive; west on Madeline drive to Busch Gardens; north on Arroyo drive to Brookside Park and Rose Bowl; west to Linda Vista avenue; north on Linda Vista to Flintridge Hotel; cross Devil's Gate Dam to Lincoln avenue; north on Lincoln to Foothill boulevard; east on Foothill to Holliston; south on Holliston to New York; east on New York to Allen avenue; south on Allen to Colorado; west on Colorado to Hill; south on Hill to San Pasqual; west on San Pasqual to Wilson; south on Wilson to California; through Oak Knoll District and Huntington Hotel; north on Lake to Colorado; west on Colorado to Maryland Hotel.

It is hereby ordered, that a certificate of public convenience and necessity for such a service be and the same hereby is granted to Tanner Motor Livery, a corporation, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION NO. 19453.

IN THE MATTER OF THE APPLICATION OF FRED G. GANSNER TO SELL, AND OF W. C. KING TO BUY, ALL OF THE PROPERTY AND EQUIPMENT OF THE QUINCY ELECTRIC LIGHT AND POWER COMPANY AND TO SECURE THE TRANSFER OF ALL OPERATIVE RIGHTS, FRANCHISES AND PRIVILEGES FOR THE OPERATION

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OF A PUBLIC UTILITY HERETOFORE KNOWN, AND NOW CONDUCTED UNDER THE FIRM NAME AND STYLE OF THE QUINCY ELECTRIC LIGHT AND POWER COMPANY.

Application No. 14334.
Decided March 10, 1928.

TRANSFER—ELECTRIC UTILITY.—F. G. Gansner authorized to transfer Quincy Electric Light and Power Company to W. C. King for $50,000.

SECURITY ISSUES—EVIDENCE OF INDEBTEDNESS—SALES AGREEMENT.—An agreement whereby a part of the purchase price is payable upon the granting of authorization to transfer properties and the balance payable in monthly installments *held* to constitute an evidence of indebtedness, the execution of which must be authorized by the Commission.

BY THE COMMISSION.

OPINION.

In the above entitled matter the Railroad Commission is asked to make an order approving an agreement and authorizing Fred G. Gansner to sell and W. C. King to buy, for $50,000, certain public utility electric properties located at Quincy, Plumas County.

The application shows that Fred G. Gansner is engaged in business, under the firm name and style of Quincy Electric Light and Power Company, of generating, purchasing and selling electric energy for lighting and power purposes in and about the town of Quincy. Energy, for the most part, is purchased from Great Western Power Company of California from its line at Indian Falls, Plumas County, although a small portion is generated in applicant's 80 k.w. hydro-electric generating plant, and retailed to about 290 consumers. The investment in the properties is in applicant's Exhibit No. One, reported at $69,290.66.

For the last three calendar years the revenues and expenses from the operation of the system have been reported as follows:

Item	*1925*	*1926*	*1927*
Operating revenues	$19,970 53	$22,741 83	$26,545 05
Operating expenses excluding taxes and depreciation	11,921 35	12,733 28	14,917 05
Net operating revenue	$8,049 18	$10,008 55	$11,628 00
Deduct taxes	2,046 08	1,472 03	1,705 64
Depreciation	3,541 21	3,579 04	3,500 00*
Total	$5,587 29	$5,051 07	$5,205 64
Net income	$2,461 89	$4,957 48	$6,422 36

* Estimated.

The testimony herein shows that Fred G. Gansner desires to retire from business and to that end has made arrangements to sell his electric business and properties to W. C. King for $50,000. It appears that under the agreement between the purchaser and seller, a copy of which is filed in this proceeding, $10,000 of the purchase price is

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payable upon the approval of this application by the Commission and the balance in monthly installments of not less than $300, with interest on deferred payments at the rate of 6 per cent per annum, with the privilege granted the purchaser of increasing the monthly payments. This agreement, in our opinion, constitutes an evidence of indebtedness coming within the purview of section 52 of the Public Utilities Act and as such its execution must be authorized by the Commission.

ORDER.

Application having been made to the Railroad Commission as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the application should be granted as herein provided, and that the money, property or labor to be procured or paid for through the execution of the agreement referred to herein is reasonably required for the purpose specified herein, and that the expenditure for such purpose is not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that Fred G. Gansner, doing business under the firm name and style of Quincy Electric Light and Power Company, be and he hereby is authorized to sell to W. C. King the public utility electric business referred to in this application and in the preceding opinion, for $50,000, payable in accordance with the terms and conditions of the agreement, dated February 8, 1928, by and between said Fred G. Gansner and W. C. King, the execution of which agreement is hereby authorized.

The authority herein granted is subject to the following conditions:

1. The price at which the properties herein referred to are authorized to be transferred shall not, hereafter, be urged before this Commission or other public body or court as a measure of value of such properties for the purpose of fixing rates, issuing securities or any other purpose, other than the transfer herein authorized.

2. The authority herein granted shall become effective when W. C. King has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $40.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION NO. 19454.

IN THE MATTER OF THE APPLICATION OF LEWIS A. TURNER AND PRUDENCE TURNER, SELLERS, AND BELL WATER COMPANY, A CORPORATION, BUYER, FOR AN ORDER AUTHORIZING THE CONVEYANCE OF PROPERTY, AND THE ISSUANCE OF NOTES.

Application No. 14369.

Decided March 10, 1928.

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TRANSFER—WATER UTILITY—NOTE.—L. A. and Prudence Turner authorized to transfer water system in vicinity of Bell, Los Angeles County, to Bell Water Company, and the latter authorized to issue its note in the amount of $14,000 in part payment.

BY THE COMMISSION.

OPINION.

In the above entitled matter the Railroad Commission is asked to authorize Lewis A. Turner and Prudence Turner to sell certain public utility water properties, known as the Turner Water System, for $15,000, to Bell Water Company, a corporation, and to authorize Bell Water Company to execute a deed of trust and a chattel mortgage and to issue a promissory note in the principal mount of $14,000, payable in installments of $200 or more a month, until April 10, 1933, when the unpaid balance becomes due and payable, with interest on unpaid balances at the rate of 7 per cent per annum.

It appears that both the Turner Water System and the Bell Water Company supply water for domestic and other purposes in and about the city of Bell, Los Angeles County, the former serving about 220 consumers and the latter about 1182. The revenues and expenses of the two systems for the last three calendar years have been reported as follows:

I. TURNER WATER SYSTEM.

Item	1925	1926	1927
Operating revenues	$5,631 28	$5,824 95	$4,775 20
Operating expenses, including taxes and depreciation	5,753 90	6,877 23	6,194 91
Net operating loss	$122 62	$1,052 28	$1,419 71

II. BELL WATER COMPANY.

Item	1925	1926	1927
Operating revenues	$23,086 08	$26,432 74	$26,867 69
Operating expenses, including taxes and depreciation	17,547 29	20,365 89	23,183 29
Net operating revenues	$5,538 79	$6,066 85	$3,684 40

At the close of 1927 Lewis A. Turner and Prudence Turner report fixed capital installed at $27,962.65 and reserve for accrued depreciation at $10,376.15, leaving a net figure of $17,586.50. It appears that the properties comprising the Turner Water System will be transferred free of encumbrances for $15,000 payable $1,000 in cash and $14,000 by a promissory note due in monthly installments of $200 or more, until April 10, 1933, when the unpaid balance becomes due and payable, with interest at the rate of 7 per cent per annum on the unpaid balances. Payment of the note will be secured by a deed of trust and a chattel mortgage on the properties transferred. Copies of both instruments have been filed with the Commission and seem to be in satisfactory form.

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It is recited in the application that Bell Water Company agrees to serve the same consumers and territory now served by the Turner Water System and to take over all the obligations of service now resting on the sellers as the owners and operators of a public utility water system. It appears that the rates now charged on the Turner Water System will be continued. Under the circumstances and conditions set forth, we believe the transfer of the properties should be authorized.

ORDER.

Application having been made to the Railroad Commission for an order authorizing the transfer of a public utility water system and the execution of a deed of trust and a chattel mortgage and the issue of a note, and the Railroad Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the note is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Lewis A. Turner and Prudence Turner be and they hereby are authorized to sell and transfer for $15,000 to Bell Water Company, a corporation, the public utility water system and properties referred to in this application and known as the Turner Water System.

It is hereby further ordered, that Bell Water Company be and it hereby is authorized to execute a deed of trust and a chattel mortgage, substantially in the same form as those filed with the Commission on February 9, 1928, and to issue, in part payment for the Turner Water System, its promissory note secured by said deed of trust and chattel mortgage in the principal amount of $14,000 payable in monthly installments of $200 or more, until April 10, 1933, when the unpaid balance shall become due and payable, with interest at the rate of not exceeding 7 per cent per annum on deferred payments.

The authority herein granted is subject to the following conditions:

1. The price at which the properties referred to herein are authorized to be transferred shall not be urged before this Commission or other public body or court as a measure of value of said properties for the purpose of fixing rates, issuing securities or any purpose other than this transfer.

2. Within thirty days after the transfer of the properties referred to herein Bell Water Company shall file a certified statement indicating the exact date upon which it acquired possession of the properties and a certified copy of the deed or deeds of conveyance.

3. Bell Water Company shall keep such record of the issue and delivery of the note herein authorized as will enable it to file, within

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thirty days after such issue, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. Lewis A. Turner and Prudence Turner, within thirty days after relinquishing possession of the properties referred to herein shall file a financial statement prepared on the report forms provided by this Commission, covering the period from January 1, 1928, to the date upon which they transferred said properties.

5. The authority herein granted shall become effective when Bell Water Company has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION No. 19455.

HUNT BROTHERS PACKING COMPANY, A CORPORATION.

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION; MODESTO AND EMPIRE TRACTION COMPANY, A CORPORATION.

Case No. 2423.

Decided March 10, 1928.

REPARATION.—Southern Pacific Company and Modesto and Empire Traction Company directed to pay to Hunt Bros. Packing Company charges collected in excess of 15½ cents per 100 pounds on shipments of fresh peaches from Empire to Modesto.

J. A. Himmel and *A. J. Zamb*, for Complainant.
W. H. Murray for Southern Pacific Company and Modesto and Empire Traction Company, Defendants.

BY THE COMMISSION.

OPINION.

Complainant is a corporation organized under the laws of the State of California with its principal place of business at San Francisco and is engaged in the packing, canning and marketing of canned goods. By complaint duly filed it is alleged that a 22-cent rate assessed and collected by defendants on various shipments of fresh peaches moved from Empire via the Modesto and Empire Traction Company to Modesto thence Southern Pacific to Hayward during September, 1926, was unreasonable and unduly discriminatory to the extent that such rate exceeded the subsequently established rate of 15½ cents per 100 pounds. Reparation only is sought.

Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary and the case having been duly submitted is now ready for our opinion and order.

The complainant's shipments moved from Empire to Hayward via the Modesto and Empire Traction Company to Modesto, thence

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Southern Pacific to destination, a distance of 87 miles, and the 22-cent rate assessed on such shipments was the Modesto combination, being 9½ cents Empire to Modesto as shown in item 170 of Modesto and Empire Traction Company Tariff 2-G, C. R. C. 18, plus 12½ cents from Modesto to Hayward as shown in item 340 of Southern Pacific Tariff 817-C, C. R. C. 2865. A 15½-cent rate was subsequently established via this route effective July 30, 1927, in item 1709 of supplement 14 to Pacific Freight Tariff Bureau Tariff 65-F, C. R. C. 382, which is the rate complainant seeks to have applied on shipments made by it. The rate in effect during September, 1926, from Empire to Hayward, via the Santa Fe to Stockton, thence Southern Pacific to Hayward, a distance of 103 miles, was 15½ cents, this being made 7½ cents from Empire to Stockton, as shown on page 13 of Atchison, Topeka and Santa Fe Tariff 11992-E, C. R. C. 550, plus 8 cents from Stockton to Hayward as shown in item 170 of Southern Pacific Tariff 817-C, C. R. C. 2865. There was also in effect during September, 1926, a rate of 15½ cents from Modesto to Hayward via Modesto and Empire Traction Company to Empire, Atchison, Topeka and Santa Fe Railway to Stockton, thence Southern Pacific to Hayward, a distance of 108 miles, which is the Stockton combination, being 7½ cents Modesto to Stockton as shown in item 315 of Atchison, Topeka and Santa Fe Railway Tariff 11569-J, C. R. C. 555, plus 8 cents from Stockton to Hayward as shown in item 170 of Southern Pacific Tariff 817-C, C. R. C. 2865.

Other rates comparing favorably with the 15½-cent rate herein sought were in effect from this same general territory for comparable distances and were less than the through Class "C" rates which are usually observed in the construction of rates on fresh fruit.

In view of the relative adjustment of other fresh fruit rates from this territory we are of the opinion and so find that the 22-cent rate assessed and collected on complainant's shipments was under the circumstances unreasonable to the extent it exceeded the subsequently established rate of 15½ cents per 100 pounds; that complainant made the shipments as described, paid and bore the charges thereon, has been damaged to the extent of the difference between the freight charges paid and those that would have accrued at the rate herein found reasonable and is entitled to reparation with interest at the rate of 6 per cent per annum.

Complainant should submit statement of shipments to defendants for check. Should it not be possible to reach an agreement, the matter may be referred to this Commission for further consideration and the entry of a supplemental order should such be necessary.

ORDER.

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, full investigation of

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the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion immediately preceding this order, which said opinion is hereby referred to and by reference made a part hereof;

It is hereby ordered, that the Southern Pacific Company and the Modesto and Empire Traction Company according as they participated in the traffic, be and they are hereby authorized and directed to pay unto the complainant, Hunt Brothers Packing Company all charges they may have collected on shipments involved in this proceeding in excess of 15½ cents per 100 pounds, the rate herein found to be just and reasonable for the transportation of fresh peaches from Empire to Hayward via the Modesto and Empire Traction Company to Modesto, thence Southern Pacific to destination, together with interest at the rate of 6 per cent per annum.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION No. 19456.

PIONEER RUBBER MILLS

vs.

SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 2426.

Decided March 10, 1928.

REPARATION.—Complaint seeking reparation dismissed.

RATES—REASONABLENESS—FACTORS CONSIDERED—COMPARISONS.—A comparison of rates is of little or no probative value when it is not shown to what extent, if any, the commodity under consideration comes into competition with the commodities instanced.

D. K. Donelson, for Complainant.
A. L. Whittle and *C. N. Bell,* for Defendant Southern Pacific Company.
Berne Lery, for Defendant The Atchison, Topeka and Santa Fe Railway Company.

BY THE COMMISSION.

OPINION.

Complainant, a corporation, organized under the laws of the State of California with its principal place of business at San Francisco, is engaged in manufacturing and selling mechanical rubber goods. It alleges by complaint filed October 6, 1927, that the rates charged on numerous carloads of junk rubber tires shipped from San Francisco and Oakland to Pittsburg during the period November 30, 1925, to March 26, 1927, were unjust and unreasonable in violation of section 13 of the Public Utilities Act to the extent they exceeded 6 cents per 100 pounds.

We are asked to prescribe a rate of 6 cents for the future and to award reparation. Rates are stated in cents per 100 pounds.

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A public hearing was held before Examiner Geary at San Francisco January 24, 1928, and the case having been duly submitted is now ready for an opinion and order.

The points of origin and destination are served by both defendants also by water carriers operating on San Francisco Bay and the Sacramento and San Joaquin rivers. The distances via the Southern Pacific to Pittsburg from San Francisco and Oakland are 49 miles and 45 miles respectively; via The Atchison, Topeka and Santa Fe Railway the distance from San Francisco is 43 miles and from Oakland 44 miles.

Junk rubber tires vary in price from $11 to $17 per ton and are rated Class "C" in the Western Classification. The lawfully applicable Class "C" rate of 8½ cents was charged on the shipments moving prior to March 26, 1927. On and after that date charges were assessed on the basis of a commodity rate of 7 cents which was voluntarily established by each defendant. These rates yielded ton-mile earnings ranging from 3.47 cents to 3.95 cents on the shipments moving prior to March 26, 1927, and from 2.86 cents to 3.25 cents on those that moved after that date.

Complainant compares the rates assailed with those on crude rubber, window glass, scrap paper, rags, rosin, iron and steel castings and other articles from San Francisco, Oakland, Stockton and Wilmington to destinations in California. Practically all of the rates shown are applicable on commodities that are not comparable with the rates on junk rubber tires, and the earnings, although in certain instances slightly lower than those under the rates assailed, are not helpful in determining the issues herein. Such comparison is of little or no probative value, it not being shown to what extent, if any, the commodity here under consideration comes into competition with the commodities instanced.

Defendants introduced exhibits comparing the rates charged and earnings thereunder with the following rates and earnings on junk rubber tires to Pittsburg: from Modesto 14 cents 64 miles, San Jose 13 cents 71 miles, Sacramento 13 cents 75 miles, and Santa Rosa 16 cents 86 miles. These rates yield ton-mile earnings of 4.38 cents, 3.66 cents, 3.47 cents and 3.72 cents, respectively. Other comparisons include rates of 7½ cents from Los Angeles to El Monte 13 miles and Oakland to Manteca 12½ cents for 80 miles. They also refer to rates on lumber, grain, asphalt, sulphur, infusorial earth and fuel oil for distances ranging from 24 to 60 miles; however, these commodities are not similar to junk rubber tires, and furthermore the rates shown are not between the points involved in this proceeding, therefore do not reflect a proper comparison.

Defendants contend that the general level of rates between San Francisco-Oakland and Pittsburg is depressed by active water compe-

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tition in and around San Francisco Bay and tributaries thereto. They contend further that prior to the establishment of the present 7-cent rate complainant was advised of the action to be taken and that this rate was entirely satisfactory to the complainant. A copy of its letter addressed to The Atchison, Topeka and Santa Fe Railway under date of January 19, 1927, bearing out defendant's testimony, was introduced at the hearing.

In *Consolidated Southwestern Cases*, 123 I. C. C. 203–450 the federal commission prescribed a distance scale of class rates also commodity rates on numerous articles, and on scrap rubber for distances ranging from 40 to 50 miles a rate of 13 cents was prescribed.

The primary question for determination is the reasonableness of the rates charged. Complainant offered no conclusive evidence to show that the rates assessed were unreasonable *per se* or in comparison with other rates on junk rubber tires. Defendants show that the ton-mile earnings under these rates were substantially lower than those under the rates contemporaneously applicable from a number of points to Pittsburg for somewhat longer hauls where the operating conditions are more favorable than those prevailing between San Francisco and Pittsburg.

After consideration of the testimony and exhibits we are of the opinion and find that the rates charged were not unjust or unreasonable. The record is convincing that for the future the current 7-cent commodity rate is reasonable for the service involved. The complaint will be dismissed.

ORDER.

This case being at issue upon complaint and answers on file, having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION NO. 19457.

THE WESTERN PACIFIC RAILROAD COMPANY

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY.

Case No. 2253.

Decided March 10, 1928.

21—56862

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RATES RAILROAD—THROUGH ROUTE AND JOINT RATES.—Northwestern Pacific Railroad Company ordered to establish through route and joint rates via San Francisco for the transportation of lumber and its products from Oroville and Adelaide on the Western Pacific Railroad to Shellville Junction, Dos Rios and all main and branch line points intermediate thereto on Northwestern Pacific Railroad.

RATES—RAILROAD—THROUGH ROUTE AND JOINT RATES.—Complainant carrier, being the originator of the traffic, was held entitled to the longest reasonable haul, and could not, under ordinary circumstances, be asked to short-haul itself because of the desire of a third carrier to interject itself as a participating carrier. The establishment of a through route and joint rate from points on one carrier to points on another carrier being desirable in the public interest, defendant carrier's failure and refusal to join in such a route was discriminatory and prejudicial to complainant carrier.

James S. Moore, Jr., for Complainant.
R. W. Palmer, for Defendant.
A. Larsson, for A. Larsson Traffic Service, Intervener in favor of Complainant.
F. W. Mielke, for Southern Pacific Company, Intervener in behalf of Defendant.
L. F. Brockamp, for California Sugar and White Pine Company.
H. E. Cole and *A. F. Wortman*, for California Fruit Exchange, Lumber Department.

BY THE COMMISSION.

OPINION ON REHEARING.

The Commission on February 24, 1927, rendered its Decision No. 18024 in the above entitled case. Complainant, The Western Pacific Railroad Company (hereinafter referred to as the Western Pacific), alleged errors in the decision and petitioned for oral argument and the presentation of further testimony. This petition was granted, the proceeding reopened May 3, 1927, hearings held before Commissioner Whitsell November 1 and 4, 1927, and orally argued before the Commission *en banc* December 17, 1927.

The substance of our original decision was this: We denied complainant's plea for an order establishing a through route and joint rates for the transportation of lumber and its products via San Francisco from the Oroville and Loyalton lumber producing groups on the Western Pacific to main and branch line points of the Northwestern Pacific Railroad Company (hereinafter referred to as the Northwestern). We found that the lumber rates to the Northwestern points made of use of local rates over the various junctions were extremely unsatisfactory, resulting in confusion, delays and uncertainty to both shippers and carriers, and making it difficult for the mills on the Western Pacific to properly market their products at points on the Northwestern in competition with lumber moving on lower joint through rates, principally from Southern Pacific Shipping points, Oroville, Chico, Weed and Westwood. The opinion recommended the establishment of a through route and joint rates via the Western Pacific to Sacramento, Southern Pacific to Shellville Junction, and Northwestern to destinations, the defendant and intervener Southern Pacific Company having voluntarily offered to join in this route.

The record indicated the actual time required for handling via

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either route was not materially different and that the shippers on the Western Pacific were not greatly concerned with the route but apparently preferred a movement through San Francisco because of the greater diversion and reconsignment privileges.

The average length of haul from both the Oroville and Loyalton groups to representative destination points north and south of Ignacio is 356.2 miles via San Francisco and 275.8 miles via Shellville Junction; and to points east of Ignacio on the Sonoma Valley Branch the average distance via San Francisco is 327.9 miles and via Shellville Junction 222.4 miles. Thus to points north and south of Ignacio the San Francisco route is 80.4 miles or 29 per cent farther than the Shellville Junction route, and to points east of Ignacio 105.5 miles or 40 per cent farther. In addition to the longer haul via San Francisco, carriers are confronted with two barge movements across the San Francisco Bay, the first via the Western Pacific from their Oakland pier to San Francisco and the second via the Northwestern from San Francisco to Tiburon. They must also absorb two State Harbor tolls of 5 cents per ton each and a State Belt Railroad switching charge of $3.50 per car, making a total estimated cost of approximately $11.92 per car. Complainant, while admitting the operation through San Francisco presents certain obstacles, strenuously contends that being the originating carrier it is entitled to the longest possible haul, also that its earnings via the San Francisco gateway would be more than reasonably compensatory. Complainant stipulated that if allowed the Shellville Junction division of earnings on the movement via the San Francisco gateway, it would assume all costs of delivering the cars to the Northwestern at Tiburon. Under this basis the per car revenue accruing to the Western Pacific from Adelaide to Sebastopol as representative of the Oroville group, after deducting the costs of the bay haul, would be $82.93 for the rail haul of 199.3 miles from Adelaide to Oakland, a per car mile revenue of 41.6 cents. The per car revenue from Cromberg to Sebastopol as representative of the Loyalton group, exclusive of the amount allocated for the bay haul, would be $89.35 for the rail haul of 296.3 miles, resulting in a per car mile revenue of 30.1 cents. At the rehearing complainant submitted evidence showing that its revenue from all traffic during the year 1926 was approximately 23 cents per car mile and the expenses about 15 cents per car mile. The average haul on all traffic during 1926 was 177.19 miles and the average loading per car 23.09 tons.

Defendant contends the Western Pacific earnings to Sacramento when delivered at that point to the Southern Pacific for movement via Shellville Junction would be materially greater per car mile than via San Francisco, and that for performing the additional haul from Sacramento to Oakland the per car mile earnings would be too low

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to be compensatory. Computed on this basis the per car mile revenue accruing to complainant for a haul from Adelaide to Sacramento would be 74.1 cents and for the additional haul from Sacramento to Oakland 26.3 cents. From Cromberg to Sacramento the per car mile revenue would be 41.9 cents and for the additional haul from Sacramento to Oakland 14.94 cents. Manifestly the per car mile earnings for the short haul to Sacramento would be greater than via San Francisco, but this is of little probative value as we are here concerned only with the adequacy and sufficiency of the revenue accruing to the Western Pacific from the point of origin via San Francisco to Tiburon, the point of delivery to the Northwestern, which, as heretofore stated, is materially in excess of the average per car mile earnings received by complainant for all traffic during 1926. Viewed in this light the Western Pacific earnings will be sufficiently high to preclude any possibility of burdening other traffic.

The principal reason for the Commission's original decision was upon a comparison of the two movements, the long one via the Western Pacific's own line to San Francisco, the other a partial movement by the Western Pacific to Sacramento for delivery to the Southern Pacific for movement by that carrier to Shellville Junction for delivery to the Northwestern. The longer haul to San Francisco is balanced to some extent by only a two-line haul as contrasted with a three-line haul through Shellville Junction.

From either a revenue or an operating standpoint the record indicates no controlling reason why defendant should not have voluntarily joined with complainant in establishing the joint rates via the San Francisco gateway, particularly in view of the fact that complainant offered to absorb the actual cost of barging to Tiburon. The rail haul from Tiburon is no more difficult than from Shellville Junction, with the possible exception of a slight grade beyond San Rafael, an incident not of controlling importance.

Complainant, being the originator of the traffic, is entitled to the longest reasonable haul and could not under ordinary circumstances be asked to short-haul itself because of the desire of a third carrier to interject itself as a participating carrier.

The Southern Pacific and The Atchison, Topeka and Santa Fe jointly control the Northwestern through stock ownership, and defendant's refusal to concur in joint rates via San Francisco is apparently actuated by the desire of the Southern Pacific to participate as a third carrier in the movement of this lumber tonnage.

After reconsideration of the entire proceeding in the light of the issues here framed, the record as now made, the cases cited, and the oral argument, we are of the opinion and find that the establishment of a through route and joint rates on lumber and its products from the

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points on the Western Pacific to points on the Northwestern here involved via San Francisco is desirable in the public interest and that defendant's failure and refusal to join in such a route is discriminatory and prejudicial to complainant. Defendant will be required to join with complainant and establish joint rates from the Oroville group no higher than the joint rates concurrently effective from Oroville on the Southern Pacific, and from the Loyalton group rates no higher than the joint rates concurrently in effect from Weed on the Southern Pacific.

No order will be entered at this time fixing the divisions, but complainant and defendant will be expected to arrive at an equitable basis. If this is not possible the matter may be brought to our further attention.

ORDER.

This case having been duly reheard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that defendant, Northwestern Pacific Railroad Company, be and it is hereby authorized and directed to establish, in conjunction with complainant, The Western Pacific Railroad Company, within forty-five days from the date of this order upon not less than five days' notice to the Commission and to the public, a through route and joint rates via San Francisco for the transportation of lumber and its products from Oroville and Adelaide to Shellville Junction, Ignacio, Sausalito, San Rafael, Tiburon, Sebastopol, Forestville, Santa Rosa, Dos Rios and all main and branch line points intermediate thereto no higher than the joint rates concurrently effective from Oroville on the Southern Pacific Company; and from Spanish Peak, Grays Flat, Quincy Junction, Massack, Spring Garden, Sloat, Cromberg, Penman, Blairsden, Delliker, Portola, Calpine and Loyalton to Shellville Junction, Ignacio, Sausalito, San Rafael, Tiburon, Sebastopol, Forestville, Santa Rosa, Dos Rios and all main and branch line points intermediate thereto no higher than the joint rates concurrently effective from Weed on the Southern Pacific.

It is hereby further ordered, that Decision No. 18024, dated February 24, 1927, in the above entitled proceeding, in so far as it is inconsistent with the order herein, be and it is hereby set aside.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION NO. 19458.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY, LOS ANGELES AND SALT LAKE RAILROAD COMPANY AND PACIFIC FRUIT EXPRESS COMPANY FOR PERMISSION TO MAINTAIN AND CONSTRUCT ICING PLATFORMS WITH IMPAIRED CLEARANCES.

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Application No. 14011.
Decided March 10, 1928.

CLEARANCES—ICING PLATFORMS.—On rehearing, Decision No. 19156 (30 C. R. C. 859) revoked, and applicants authorized to construct icing platforms at less than standard clearances.

CARR, *Commissioner.*

OPINION ON REHEARING.

A rehearing was granted at the request of the various interested parties, further hearings have been held and there has been reported to the Commission the result of a series of conferences had between the interested parties and the matter is now under submission. The understandings and agreements growing out of the conferences referred to appear to be reasonable and in line with the public interest, and the order herein should be framed accordingly.

One feature of these calls for brief reference. The carriers involved herein indicated their willingness and purpose to prepare and carry out a program affecting tracks adjacent to icing stations of the Pacific Fruit Express, which, within a period of five years, will result in the relocation of existing tracks so that all side clearances at icing platforms, of less than 7 feet 8 inches from the center line of the track, will be eliminated in so far as is practicable.

In order that the Commission may be properly informed in this matter, the carriers should file with the Commission, each year, a statement showing the tracks that have been relocated and their program for the ensuing year, and at the end of the five-year period they should file a report showing the locations, if any, where the tracks have not been so shifted as to provide the side clearance of 7 feet 8 inches and the reason why they have not been so shifted.

The following form of order is recommended:

ORDER.

The above entitled matter being under submission and ready for decision;

It is hereby ordered, that the order in Decision No. 19156, dated December 23, 1927, be and the same is hereby revoked.

It is hereby further ordered, that the above entitled application be and it is hereby granted to applicants subject to the modifications and conditions following:

(1) Tracks adjacent to icing platforms having a side clearance of less than 7 feet 8 inches shall be restricted in use to service of Pacific Fruit Express Company, said service being defined as the operations of icing, heating, ventilating and storage of refrigerator cars at plants of that company. This restriction is not intended to exclude the opera-

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tion over such tracks of inbound or outbound trains of mixed consist requiring Pacific Fruit Express platform service, as such operations are now conducted, nor the use of such tracks for the unloading of salt, ice and heating appliances or fuel for the latter.

(2) Icing platforms to be constructed in the future and additions to existing icing platforms with less than 7 feet 8 inches clearance shall have not less than 7 feet 8 inches clearance from the center line of the track. Restrictions as to operation over tracks with less than 7 feet 8 inches clearance in whole or in part shall be governed by the restrictions for that portion having the least clearance.

(3) Where tracks have a side clearance of 7 feet 8 inches or more throughout their entire length, no restrictions shall be imposed upon the operation over such tracks.

(4) Applicants shall work out a program whereby all tracks adjacent to Pacific Fruit Express plants will be shifted, where practicable, to provide a clearance of 7 feet 8 inches or more, such construction to be effected within a period of five years and the carriers to make reports as indicated in the foregoing opinion.

The authority herein granted shall become effective on the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this tenth day of March, 1928.

DECISION No. 19467.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA WATER SERVICE COMPANY, A CORPORATION, FOR (1) ORDER AUTHORIZING ISSUE OF STOCKS AND BONDS; (2) ORDER AUTHORIZING MORTGAGE OF CERTAIN PUBLIC UTILITY PROPERTIES; AND (3) JOINTLY WITH C. B. JACKSON, CHICO WATER SUPPLY COMPANY, A CORPORATION, PORT COSTA WATER COMPANY, A CORPORATION, FRESNO CITY WATER CORPORATION, A CORPORATION, VISALIA CITY WATER COMPANY, A CORPORATION, ELECTRIC WATER COMPANY, A CORPORATION, BAKERSFIELD WATER WORKS, A CORPORATION, AND HERMOSA-REDONDO WATER COMPANY, A CORPORATION, RESPECTIVELY, FOR AN ORDER AUTHORIZING PURCHASE AND SALE OF CERTAIN PUBLIC UTILITY PROPERTIES.

Application No. 13514.

Decided March 12, 1928.

SECURITY ISSUES—TRANSFER.—Decision No. 19161 (30 C. R. C. 876) rescinded. California Water Service Company authorized to issue $6,254,000 of 5 per cent bonds at not less than 92 per cent of par value; $2,130,600 of 6 per cent preferred stock at not less than 90 per cent of par value and $2,130,700 of common stock at not less than 90 per cent of par value; also to acquire properties of Tuxedo Water Company, Belvedere Water Corporation, and Petaluma Power and Water Company.

SECURITY ISSUES—IN GENERAL.—One of the most important functions entrusted to

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the Commission is that of regulating and supervising the issuance of securities, and from its inception the Commission has pursued a conservative policy, scrutinizing with great care all projects calling for the distribution of such evidences of ownership or indebtedness to the public.

DEPRECIATION—ACCRUED DEPRECIATION AS A DEDUCTION.—In an application to issue securities upon the transfer of properties consideration must be given to the fact of accrued depreciation since the purchasing company necessarily assumes the responsibility of replacing the properties which it proposes to acquire. To allow the capitalization of such depreciated property as though no depreciation had occurred would eventually result in gross overcapitalization.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION—REPRODUCTION COST NEW.—To base refinancing capitalization upon an estimated "reproduction cost new" would create a situation in which even slight variations in the prices of public utility materials and supplies might quickly wipe out a part, or even the whole of the equities possessed by common stockholders.

SECURITY ISSUES—AMOUNT—VALUE OF PROPERTY AS BASIS.—Public utility securities should be based upon sound, conservative and, in so far as possible, nonfluctuating values. (*Southern Counties Gas Co.*, 16 C. R. C. 799; *Harbor City Water Company*, 21 C. R. C. 638; *Shasta Transit Co.*, 24 C. R. C. 165; *Golden Gate Ferry Co.*, 28 C. R. C. 268; *Peerless Stages*, 30 C. R. C. 346; *Riverton & Palmyra Water Co.*, (N. J.) P. U. R. 1918B, 240; *Penna. Water Service Co.*, P. U. R. 1927E, 657.)

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION.—A recapitalization of operating properties upon a basis which would show a return of only three or four per cent upon the proposed common stock is not in the public interest.

VALUATION—PARTICULAR INTANGIBLES—WATER RIGHTS.—In a security issuance valuation upon transfer of properties, the Commission having previously approved a contract giving applicant the right to obtain a certain quantity of water free of charge, subject to the proviso that there be submitted for approval the quantity of water obligated to be delivered thereunder, when such statement has not been furnished nor no request made that an order be entered approving the amount of water which must be delivered, in absence of knowledge of that amount, the Commission refrained from recognizing an alleged water right value therefor.

VALUATION—PARTICULAR INTANGIBLES—CONTRACTS AND LEASES.—Even if any value were to be recognized in a security issuance proceeding, for a contract providing for the delivery to a utility of a certain amount of water free of charge, it would necessarily be dependent upon the life of the contract, and should be amortized, since, at the close of such period the value of such alleged "water right" would be zero.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION—POTENTIAL VALUES.—The Commission has never allowed the capitalization of potential values, nor has it permitted public utilities, after a period of operation, to refinance or recapitalize their properties upon such a basis that the outstanding securities thereof would be increased to reflect an alleged "going concern value" claimed to have been established subsequent to the construction of the properties in question.

VALUATION—PARTICULAR INTANGIBLES—WORKING CAPITAL—AMOUNT ALLOWED.—The issuance of approximately nine months' operating expense as working capital is unwarranted.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION.—Upon the consolidation of several properties and the issuance of securities, the Commission will not determine the amount of securities which may be delivered to a particular vendor in payment, but will fix the maximum amount which may be issued for all of the properties.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION—Where purchasers of operating public utility properties have desired or agreed to pay more for such properties than it has been found reasonable or proper to allow in the form of securities, the Commission has required the purchasing companies to charge such over cost to surplus. (*San Diego Consolidated G. & E. Co.*, 10 C. R. C. 230, 236; 12 C. R. C. 481, 485; *Tuolumne County E. P. & L. Co.*, 31 C. R. C. 189; *Southern California Edison Co.*, 31 C. R. C. 262.) Applicants being a new corporation having, as yet, no surplus, it was provided that such over cost

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be charged to a suspense account from which all charges should be amortized by deductions from gross corporate income, or by charges to surplus.

SECURITY ISSUES—CONDITIONS UPON WHICH AUTHORIZED.—It was required as a condition precedent or concurrent with security issuance that the vendee acquire, free and clear of all encumbrances, all of the properties or stock (except cash for working capital) described in the application. While recognizing that some one had agreed to pay more than the amount of securities authorized for the properties or stock, no pronouncement was made as to such alleged agreement, nor did the Commission attempt to fix the price which might be paid for the properties by the purchaser.

SECURITY ISSUES—NATURE AND KIND OF—MORTGAGE PROVISIONS.—A provision in a mortgage and/or deed of trust that additional bonds may be certified by the trustee in amount equal to not exceeding 80 per cent of the cash cost or the fair value, should be modified so that the trustee may not certify bonds in excess of 60 per cent of said cash cost or fair value, whichever is less.

McCutchen, Olney, Mannon and Greene, and *Garrett McEnerney*, for Applicants.
Arthur H. Garland, Deputy Commissioner of Corporations.
E. F. Brittan, City Attorney for City of Bakersfield.
Loren A. Butts, City Attorney for City of Fresno and City of Visalia.
J. L. Johnson, City Attorney for City of Stockton.

BY THE COMMISSION.

OPINION AND ORDER ON REOPENING.

On December 23, 1927, we issued our Decision No. 19161 herein, granting authority to applicant California Water Service Company to issue certain securities for the purpose of capitalizing certain properties to be acquired by the purchase (also authorized) of a number of water distributing systems in this state.[1] On January 12, 1928, this applicant filed a petition for rehearing, in which it attacked the validity of this order upon numerous grounds, most important among which is a direct challenge and attack upon our policy—long adhered to and fully matured—of basing authorization for the issuance of securities upon the actual cost of public utility properties, or, in the case of the refinancing of existing properties, upon the actual or estimated cost, less accrued depreciation, but including present vlue of land. We did not grant to this applicant authority to issue the total amount of securities which it asked permission to issue, but based our order upon this policy.

One of the most important functions which the legislature has entrusted to this Commission is, in our opinion, this function of regulating and supervising the issuance of securities by public utilities. From its very inception this Commission has pursued a most conservative policy in this regard, scrutinizing with great care all projects calling for the distribution of such evidences of ownership or indebtedness to the public. Not only have we heard no complaint against this policy from the public utility companies of this state, but it appears

[1] The properties in question are: Chico Water Supply Company, Port Costa Water Company, Fresno City Water Corporation, Visalia City Water Company, Electric Water Company, Bakersfield Water Works, Hermosa-Redondo Water Company, Petaluma Power and Water Company, Belvedere Water Corporation, all being corporations, and through C. B. Jackson the unincorporated water properties of Chico-Vecino Water Company, W. E. White Water Company and Tuxedo Water Company, and Pacific Gas and Electric Company's plants located at Stockton, Oroville, Redding, Willows, Livermore, and Dixon.

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to have met with the general approval of both the companies and the public. Under it California utilities have enjoyed an unprecedented development, and the general confidence in their securities is disclosed by their enviable position on the security markets. Our policy in this regard has, in our opinion, met the pragmatic test.

In the present instance we are dealing with an applicant which represents persons from without this state who are desirous of investing in California public utility water systems, but we do not feel that this is, in and of itself, cause for departing from our general practice in this regard. Our former order in this case contained no new pronouncement, nor did it establish a new doctrine. This applicant has not been treated, nor will it be treated, in any manner otherwise than other applicants appearing before this Commission. We believe that an adherence to our established policies will redound as well to the benefit of the public utility enterprises of this state as to that of their consumers and the holders and purchasers of their securities. To hold otherwise would, in our opinion, throw open the door to methods of financing which we consider to be unsafe as well as unsound, and for this Commission now to do so simply because someone in seeking to acquire operating public utility property has, for reasons of his own, seen fit to agree to pay for such property more than its actual or estimated cost, depreciated, would, in our opinion, be neither sound finance nor in the public interest.

We believe that in such a case consideration must be given to the fact of accrued depreciation since the purchasing company necessarily assumes the responsibility of replacing the properties which it proposes to acquire, while to allow the capitalization of such depreciated property as though no depreciation had occurred would eventually result in gross overcapitalization of such property. And if we were to base refinancing capitalization upon an estimated "reproduction cost new" as is urged by applicant, a situation would be created in which even slight variations in the prices of public utility materials and supplies might quickly wipe out a part or even the whole of the equities possessed by common stockholders. Indeed, this might easily go to the extent of seriously impairing the security of bondholders. That such a situation would be detrimental to the interest of the investing public, and therefore to the real interest of the public utilities themselves and their consumers can hardly be questioned. Public utility securities should, in our opinion, be based upon sound, conservative and, in so far as possible, nonfluctuating values. Only by adhering to such a policy can the stability requisite for such securities be established and maintained.[2]

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[2] In this connection see *In re Southern Counties Gas Co.* (1919) 16 C. R. C. 799, 802; *In re Harbor City Water Co.* (1922) 21 C. R. C. 638; *In re Shasta Transit Co.* (1923) 24 C. R. C. 165, 169; *In re Golden Gate Ferry Co.* (1926) 28 C. R. C. 268, 270; *In re Peerless Stages, Inc.* (1927) 30 C. R. C. 346. See, also, *In re Riverton & Palmyra Water Co.* (1917) P. U. R. 1918-B, 240 (New Jersey Board of Public

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In order to avoid a result which we firmly believe would react to the serious detriment of the public, be it the consuming or the investing public, we are constrained in this, as in other like cases of refinancing, to adhere to the principles which we have above set forth. We believe these principles to be sound from the financial standpoint, and we further believe that to use any other method in such a case would eventually but invite results detrimental to the public interest.

The facts involved in this proceeding have been stated at considerable length in our former orders herein (Decision 18084, dated March 21, 1927, and Decision 19161, dated December 23, 1927, referred to hereinafter as the "March order" and the "December order" respectively). In brief, this is an application by which a number of operators of public utility water corporations, as defined in the Public Utilities Act, seek to sell, and California Water Service Company seeks to acquire their several plants or systems, either by direct purchase or through the purchase of outstanding securities. The securities which California Water Service Company seeks to issue for these purposes total $13,659,-300 par value. In our former decisions we treated the several requests included in the original application herein, and the several supplemental applications which have been filed, as a single problem. We shall follow that course in this decision, believing it preferable to the separate and distinct treatment of the several applications in this matter, which has been suggested by applicant. No question is now raised as to the validity of that portion of our former orders authorizing the sale and purchase of these public utility plants, the sole attack upon our December order being upon that portion dealing with security issuance.

Applicant contends, however, that it was misled by our March order into believeing that it would be authorized to issue a certain total amount of securities for the original group of properties, for the purchase of which authorization was asked in the original petition herein. In our opinion this contention possesses no merit. Not only was it stated in our March order that it should not be inferred that the Commission then approved the various items of reported expenditure or found the same to be reasonable, but it was declared that representatives of this Commission were then engaged in examining the valuations of the properties and the financial statements submitted by applicants, and in the order granting preliminary authority to transfer the properties then in question and the immediate issuance of not exceeding $2,000,000 par value of common stock, it was added that our final order in the matter would be entered after our representatives had concluded such examination. Paragraph 7 of the order included

Utility Commissioners); *In re Pennsylvania Water Service Co.* (1927) P. U. R. 1927-E, 657 (Pennsylvania Public Service Commission); *In re United Electric Power Co.* (1927) P. U. R. ------- (Rhode Island Public Utilities Commission), and *In re Metropolitan Edison Co.* (1928) P. U. R. ----- (Pennsylvania Public Service Commission).

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in said decision, specifically held open for further determination the matter of the total security issuance which might eventually be authorized. If contracts have been made based upon the supposition that securities in the total amount then claimed would be authorized against the purchase of these original properties, they must, in our opinion, have been made in contemplation of this plain reservation and declaration on the part of this Commission. In any event we do not believe that such contracts or their execution are of significance herein.

Appraisals of the properties referred to in this proceeding were made on behalf of applicant by the Loveland Engineers, Inc., and were introduced as Exhibits 13-A, 13-B, 13-C, 14, 15 and 16. The appraisal of the Tuxedo Water Company properties is to be found in Application No. 13848.[3] For the year ending October 31, 1927, this applicant reports operating revenues on these properties at $1,888,760.16, and nonoperating revenues of $9,005.06. Net operating income is reported at $866,075.61. Upon this basis the recapitalization of these operating properties upon applicant's suggested basis, would show only a return of 3 per cent or 4 per cent upon the proposed common stock, a result which we do not believe would be in the public interest. We shall allow the issuance of securities upon the purchase of all of the public utility properties mentioned in the original and the several supplemental applications herein, in the amount of $10,515,300 to produce a net total of $9,588,811.53. This amount has been determined as follows:

Estimated historical cost by Loveland Engineers:

Physical properties		$10,353,439 00
Land, present value	$662,598 00	
Other properties	9,690,841 00	
Additions to January 1, 1927		50,485 00
Preliminary expense		86,000 00
Organization expense		276,000 00
Cost of securing franchises		20,345 00
Water rights		496,000 00
Cost of searching land titles		35,598 00
Going concern value		1,745,000 00
Adding materials and supplies		166,481 00
Working capital		150,000 00
Subtotal		$13,379,348 00
Cost of additions		315,050 53
Subtotal		$13,694,398 53

[3] The Loveland Engineers reported the reproduction cost, new, of all the properties involved in this proceeding, at $18,396,566; the reproduction cost, new, less depreciation, at $16,540,651; and the estimated original cost at $13,379,348. These figures do not include an item of $315,050.53 alleged to have been expended for additions and betterments, nor an item of $464,375 for additional working capital. A "sound value" of $15,500,000, including the working capital item above mentioned, is claimed. Of the par value of $13,659,300 of securities proposed by applicant to be issued, for a net yield of $11,808,375, the sum of $11,344,000 is alleged to be necessary in order to acquire, free and clear of encumbrances, the properties herein authorized to be purchased. This includes more than $500,000 to cover premiums on bonds allegedly paid to acquire properties free and clear of encumbrances, together with alleged expenses for acquiring and consolidating the properties (including legal, engineering, accounting and other expenses) reported at approximately $300,000, and in addition the $464,375 requested for working capital.

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Working capital which company provides for in proposed security issue in addition to Loveland's		465,000 00
Grand total		$14,159,398 53

Deductions which Railroad Commission believes should be made:

Water rights	$281,436 00	
Going concern value	1,745,000 00	
Difference between Commission's engineers estimate of historical cost and Loveland on properties contained in Exhibit 13-C	754,354 00	
Working capital	465,000 00	
Organization and preliminary expense reduced by	150,000 00	
Accrued depreciation	1,174,797 00	
		4,570,587 00
		$9,588,811 53

The various deductions which we have made from the estimates of the Loveland Engineers should be explained.

Water Rights.

In a number of former proceedings involving the fixing of rates we have heretofore considered what allowance, if any, should be made for alleged water rights of certain of the companies whose properties are here under consideration. Such determinations have been considered in fixing the amount to be allowed to cover the item of water rights herein.[4] We have allowed the item of $8,000 claimed for such rights in general, and we have included an item of $28,333 for the alleged water rights of the Livermore Company. This action should not, however, be assumed as a final finding of the value of such rights, or of an approval of the theory upon which this estimate was based. We have eliminated the item for "prospecting for water" in the case of the Hermosa-Redondo sytem. In the case of the Oroville properties the Loveland Engineers estimated the value of water rights at $80,000, upon the ground that the California Water Service Company possesses, under a twenty-five year contract with the Pacific Gas and Electric Company, the right to obtain a certain quantity of water for use in connection with these properties free of charge. In our Decision No. 18101, dated March 24, 1927, in Application No. 13429 we approved this contract subject to the provision that there be submitted to this Commission for approval the quantity of water which the Pacific Gas and Electric Company will be obligated to deliver to California Water Service Company thereunder. To date we have not been furnished with any such statement, nor have we been requested to enter an order approving the amount of water which the Pacific Gas and Electric Company must deliver to the California Water Service Company. In view of the fact

[4] See *In re Petaluma Power & Water Company* (1926) 29 C. R. C. 125; *In re Belvedere Water Company* (1916) 10 C. R. C. 705; *In re Port Costa Water Company* (1923) 22 C. R. C. 909.

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that we have no knowledge of the amount of water so to be delivered, we refrain from recognizing herein an alleged water right value in the amount of $80,000 attaching to the Oroville properties. It should be added that, even if any value were to be recognized therefor, it would necessarily be dependent upon the life of the contract and should be amortized over the life thereof, since, at the close of the period in question, the value of such alleged "water right" would be zero. While we are willing to allow for water rights the amounts herein indicated, it should be understood that such allowance is for the purpose of this proceeding only.

"Going Concern Value."

This Commission has never heretofore allowed the capitalization of potential values, nor has it permitted public utilities after a period of operation to refinance or recapitalize their properties upon such a basis that the outstanding securities thereof would be increased to reflect an alleged "going concern value" claimed to have been established subsequent to the construction of the properties in question. In this proceeding we are asked to recognize for capitalization purposes such an alleged "going concern value" in the amount of $1,745,000. This item we consider improper for capitalization purposes, and it has been eliminated.

Historical Cost Estimates.

The difference between the estimated historical cost of the physical properties (original group of properties) as submitted by the Loveland Engineers and as submitted by our engineers was $754,354. For the purpose of this decision, as far as the original group of properties is concerned, we have accepted the estimate of historical cost of physical properties submitted by our engineers. Since they made no estimate of the historical cost of the physical properties of the Belvedere Water Corporation, the Petaluma Power and Water Company properties, the Tuxedo Water System, the Montebello properties or the Eastmont Park Water System, we have in these instances accepted the historical cost estimates of physical property as submitted by the Loveland Engineers.

Materials and Supplies and Working Capital.

We have included in the total of $9,588,811.53 the sum of $166,481 to cover materials and supplies and $150,000 for working capital, a total of $316,481. These are the allowances for such items which were made in the Loveland Engineers' report. We are requested herein to authorize the issuance of securities to produce additional working capital in the amount of $465,000, or a total, when added to the above items, of $781,481. This would be the equivalent of approximately

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nine months operating expense and, in our opinion, such an allowance is unwarranted. We will allow the amount of $316,481 above stated.

Organization Expense.

There is included in applicant's estimated historical cost of these properties an item of $362,000 for preliminary expense and organization expense, and the same amount has been included in the estimate of reproduction cost new. Our experience with these companies leads us to conclude that they did not incur any such expense for organization purposes. We have, therefore, reduced this item to $212,000, which amount we consider to be a liberal allowance to cover any such expenses actually incurred.

Accrued Depreciation.

At the hearing of January 28th, last, it was argued that we erred in deducting an item of $1,056,745, which was the sum reported by the Loveland Engineers as the accrued depreciation upon these properties. It is alleged that this error arose from the fact that for the original group of properties we used the estimated historical cost submitted by our engineers, whereas we accepted the accrued depreciation item on the estimated historical cost submitted by the Loveland Engineers. It is true that this was done, but such action was in fact in favor of this applicant to the extent of $115,000. Inasmuch, however, as exception has been taken to this method of procedure we will, in this opinion, so far as the original group of properties are concerned, use the accrued depreciation figure reported by our engineers, and we will use the accrued depreciation item reported by the Loveland Engineers in reference to the other properties. This results in a deduction for accrued depreciation of $1,174,797 instead of the $1,056,745 appearing in Decision No. 19161.

We will allow 60 per cent of the herein authorized securities to be obtained through the issuance of 5 per cent bonds, 20 per cent through the issuance of 6 per cent cumulative preferred stock and 20 per cent through the issuance of common stock. Our order will provide that the bonds so authorized shall be sold to net not less than 92 and accrued interest, and that the preferred and common stock shall be sold to net not less than 90 per cent of par value to the applicant. On this basis applicant, in order to realize the net total amount of $9,588,811.53 above mentioned, would have to issue a par value of $6,254,000 of such bonds, of $2,130,600 of such preferred and $2,130,700 of such common stock. The total par value of securities the issuance of which we will herein authorize is therefore $10,515,300.

In the second amended application herein it is recited that securities or cash will be delivered in payment for the properties of Belvedere Water Corporation. We will not herein determine the amount of

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securities which may be so delivered. Instead, our order will fix the maximum amount of securities which this applicant may issue for all of these properties and will provide that said securities may be sold for cash and such cash used to pay for properties or stock, or that a portion of these authorized securities may, at its option, be used by California Water Service Company to pay for the properties of Belvedere Water Corporation.

We will require that, as a condition precedent to, or concurrently with the issuance of the said securities, the California Water Service Company shall acquire free and clear of all encumbrances all of the properties or stock (except the cash for working capital mentioned above) described directly or indirectly in this application. We do not in any respect take it upon ourselves nor attempt to fix the price which may be paid for these properties by the purchaser. We recognize that it would seem to appear from the record of this proceeding that someone has agreed to pay more than the above amount for this property or stock. As to any such alleged agreement we make no pronouncement.

In the past, where purchasers of operating public utility properties have desired or agreed to pay more for such properties than we have found it reasonable or proper to allow in the form of securities, we have required the purchasing companies to charge such overcost to surplus.[5] If, in the present instance, this purchaser desires to pay or does in fact pay more than the amount realized from the sale of the securities herein authorized for the properties or stock of the several companies here in question, the difference between said amount and such price as the vendee may actually pay must therefore be obtained in some manner other than through the issuance of such authorized securities. Since this applicant is a new corporation possessing as yet no surplus we will provide that any such overcost shall be charged to a suspense account from which account all such charges shall be amortized by deductions from gross corporate income, as that term is used in our annual report forms, or by charges to surplus.

There has been filed in this proceeding a copy of the proposed mortgage and/or deed of trust (Exhibit 4) which California Water Service Company asks permission to execute to secure the payment of an authorized bond issue of $25,000,000. We have examined the proposed mortgage and/or deed of trust and feel that it should be modified in several particulars. As it now reads, it provides that after the issuance of the initial series of bonds, additional bonds may be certified by the trustee subject to the conditions set forth in the instrument in amount equal to not exceeding 80 per cent of the cash cost or the fair value,

[5] See *In re San Diego Consolidated Gas & Electric Company* (1916) 10 C. R. C. 230, 236 and (1917) 12 C. R. C. 481, 485; *In re Tuolumne County E. P. & L. Co.* (Dec. 19372) dated Feb. 16, 1928, and *In re So. Cal. Edison Co.* (Dec. 19413) dated Feb. 25, 1928.

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should such fair value be less than the cash cost of property constructed or acquired subsequent to February 1, 1927. This provision we believe should be modified so that the trustee may not certify bonds in excess of 60 per cent of said cash cost or fair value, whichever is less. There should also be eliminated from the mortgage and/or deed of trust article nine, which gives certain immunity to incorporators, stockholders, officers and directors. The elimination of article nine necessitates a corresponding change in the form of the bonds.

Before determining whether section eight of article III or subdivision one (1) paragraph B under section three (3) of article II should be modified or eliminated, we desire to be furnished with a statement showing that an expenditure of an amount equal to 9 per cent of the gross revenue is sufficient for the proper maintenance and replacement (depreciation of the properties), when such replacement becomes necessary. True, the 9 per cent represents the minimum amount that must be expended for such purposes, but occasionally the minimum becomes the maximum in actual practice. A revised copy of the proposed mortgage and/or deed of trust should be filed with the Commission.

ORDER.

Petition for rehearing of our Decision No. 19161 herein having been filed by the California Water Service Company; this proceeding having been reopened by order for the consideration of the divers allegations and contentions of said petition for rehearing; hearing and argument having been had upon said reopened proceeding before this Commission *en banc;* the Commission being fully advised in the premises and basing its order upon the record now on file herein, including said petition for rehearing and each and every allegation thereof, together with said argument on reopening, as well as upon the several findings of fact in the opinion hereinabove contained, and being of the opinion that the California Water Service Company should be permitted to issue not exceeding $6,254,000 of 5 per cent twenty-five year first mortgage bonds, not exceeding $2,130,600 of 6 per cent cumulative preferred stock and not exceeding $130,700 of common stock, which common stock is in addition to the $2,000,000 of common stock authorized by our Decision No. 18084 herein; that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant, California Water Service Company, for the purposes herein stated, and that the expenditures herein authorized for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application in so far as it involves the issue of $2,016,000 of bonds, $564,400 of preferred stock, and $563,000 of common stock, should be dismissed without prejudice; therefore

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It is hereby ordered:

(1) That Decision No. 19161, rendered herein on December 23, 1927, be and the same is hereby set aside, rescinded and declared to be of no further force or effect, in which connection we hereby declare that the within decision and order is published in the place and stead of our said Decision No. 19161 and in all respects in lieu thereof.

(2) C. B. Jackson may sell and convey to, and California Water Service Company may purchase, the properties described in this application as the Tuxedo Water Company.

(3) California Water Service Company may purchase, hold and own the stock of the Petaluma Power and Water Company.

(4) The Belvedere Water Corporation and Petaluma Power and Water Company respectively may sell and convey to, and California Water Service Company may purchase, all of the business, assets and properties of said Belvedere Water Corporation and Petaluma Power and Water Company, subject to their outstanding liabilities at the date of the transfer.

(5) C. B. Jackson, Belvedere Water Corporation and Petaluma Power and Water Company may abandon and discontinue their respective public utility businesses, obligations and service if, as and when the transfer of their properties to the California Water Service Company shall become effective.

(6) Paragraph seven of the order in Decision No. 18084, dated March 21, 1927, reading:

> Applicant, California Water Service Company, is hereby authorized to issue $2,000,000 par value of common stock and sell said $2,000,000 of common stock together with such additional stock (common and/or preferred) and bonds which the Commission may hereafter authorize to be issued for not more than $9,422,475 and use said $9,422,475, or lesser amount, for the purposes set forth in the foregoing opinion, provided that the Commission is under no obligation to authorize the issue of securities equal in par value to the $9,422,475, or lesser amount, and provided, further, that only such part of the $9,422,475, or lesser amount, as may hereafter be determined by the Commission, shall be charged to fixed capital account.

be and the same is hereby amended so as to read:

California Water Service Company may issue not exceeding $6,254,000 par value of first mortgage twenty-five year 5 per cent bonds, not exceeding $2,130,600 par value of 6 per cent cumulative preferred stock and not exceeding $2,130,700 par value of common stock and sell said bonds at not less than 92 per cent, net, of their face value, and said preferred and common stock at not less than 90 per cent, net, of its par value. The proceeds obtained from the sale of said bonds and stock shall be used to pay for the properties which California Water Service Company is authorized to acquire by the authority granted in this order, and which are referred to in this decision, and by the authority granted in Decision No. 18084, dated March 21, 1927, pro-

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vided that, if California Water Service Company deems it necessary, it may deliver, on the bases stated, part of said bonds and stock in payment for the properties of the Belvedere Water Corporation. This authority is hereby conditioned upon the acquisition of California Water Service Company of all of said properties, free and clear of all encumbrance.

(7) California Water Service Company shall keep its accounts and records in accordance with the uniform classification of accounts prescribed by this Commission, provided that not more than $10,347,127.53 may be charged to fixed capital accounts. Any sum which may be paid for the properties here in question in excess of $9,588,811.53 shall be charged to a suspense account and amortized by deductions from gross corporate income, as that term is used in our annual report forms, or by charges to surplus during such time as may hereafter be approved by this Commission.

(8) This application, in so far as it involves the issue of $2,016,000 face amount of bonds, $564,400 par value of preferred stock and $563,000 par value of common stock, is hereby denied without prejudice.

(9) Funds sufficient to cover the fee collectible by reason of the authority to issue securities granted herein are already in the hands of our secretary. This order, in so far as it grants authority to California Water Service Company to issue securities, will become effective upon and from the filing with this Commission by said California Water Service Company of a written notice of acceptance of the within decision, and the filing with this Commission of the amendments to said applicant's proposed deed of trust mentioned in the opinion preceding this order, after the filing of which respective documents the secretary of this Commission is hereby authorized to refund to applicant, California Water Service Company, any sum or sums in his hands from said California Water Service Company over and above the fee lawfully collectible by reason of the security issuance authorization included in this order.

(10) California Water Service Company shall keep such record of the issue, sale and delivery of the bonds and stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(11) Within thirty days from and after the execution of the same, or any of them, California Water Service Company shall file with this Commission certified copies of all deeds or other documents executed for the purpose of evidencing the transfer to it of any of the public utility properties hereinabove mentioned.

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(12) Paragraph nine of the order of our Decision No. 18084, dated March 21, 1927, reading:

> Under the authority herein granted no properties may be transferred and no stock issued after December 31, 1927,

is hereby amended so as to read:

Under the authority herein granted no properties may be transferred and no bonds and stock issued after May 31, 1928.

(13) For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twelfth day of March, 1928.

Decision No. 19469.

IN THE MATTER OF THE APPLICATION OF GOLDEN GATE STAGES (FORMERLY KNOWN AS SANTA ROSA, PETALUMA AND SAUSALITO AUTO STAGE COMPANY), A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A LIMITED PACKAGE AND EXPRESS SERVICE BETWEEN SANTA ROSA AND CALISTOGA; TO ESTABLISH CERTAIN NEW RULES AND REGULATIONS GOVERNING THE TRANSPORTATION OF PERSONS AND BAGGAGE; AND TO OPERATE AN AUTOMOBILE STAGE SERVICE FOR THE TRANSPORTATION OF PASSENGERS AND BAGGAGE, AS A COMMON CARRIER, BETWEEN SANTA ROSA AND SAN FRANCISCO AS AN EXTENSION OF APPLICANT'S PRESENT SERVICE BETWEEN SANTA ROSA AND SAUSALITO.

Application No. 13362.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND AND OPERATE ITS AUTOMOBILE STAGE SERVICE AS A COMMON CARRIER OF PASSENGERS AND EXPRESS BETWEEN SAN FRANCISCO AND SANTA ROSA AND INTERMEDIATE POINTS AND TO CONNECT SUCH OPERATIONS WITH ITS OPERATIONS FROM SAN FRANCISCO NORTH TO EUREKA VIA REDWOOD HIGHWAY, AND TO SELL THROUGH TICKETS TO AND FROM THE POINTS HEREIN APPLIED FOR TO AND FROM POINTS SOUTH OF SAN FRANCISCO.

Application No. 13447.

Decided March 12, 1928.

CERTIFICATES—AUTO STAGE.—Golden Gate Stages authorized to extend auto stage service between Santa Rosa and San Francisco and intermediate points, provided that no local service be rendered between San Francisco and Sausalito, and to transport express packages between Santa Rosa and Calistoga. Pickwick Stages authorized to extend service between San Francisco and Eureka, so as to transport express packages between San Francisco and points north of Santa Rosa.

Wallace L. Ware and *Frank B. Austin*, for Golden Gate Stages, Applicant.
Warren E. Libby and *Frank B. Austin*, for Pickwick Stages System, Applicant.
Goodfellow, Eells and Orrick, by *R. W. Palmer* and *S. W. Gardner*, for Northwestern Pacific Railroad Company, Protestant.
Edward Stern, for American Railway Express Company, Protestant.

BY THE COMMISSION.

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OPINION.

In Application No. 13362, as amended, Golden Gate Stages (heretofore known and designated as Santa Rosa, Petaluma and Sausalito Auto Stage Company) petitions the Railroad Commission for a certificate of public convenience and necessity to operate an automobile stage service for the transportation of passengers and baggage, as a common carrier, between Santa Rosa and San Francisco and intermediate points as an extension of applicant's present service between Santa Rosa and Sausalito; also, to operate a limited package and express service between Santa Rosa and Calistoga and intermediate points; also, to establish certain new rules and regulations governing the transportation of persons and baggage.

In Application No. 13447, as amended, Pickwick Stages System petitions the Railroad Commission for an order declaring that public convenience and necessity require the extension by applicant of its present service between San Francisco and Eureka so as to enable it to transport express matter in packages not exceeding 100 pounds each in weight between San Francisco and points north of Santa Rosa and from points intermediate between San Francisco and Santa Rosa and points north of Santa Rosa, and the consolidation of such extension with the operations now conducted by applicant under authorization of this Commission.

Public hearings were conducted by Examiner Gannon at San Francisco and Santa Rosa, the matters were consolidated for the purpose of receiving evidence and having been duly submitted are now ready for decision.

In discussing the evidence we shall consider each application separately.

Applicant Golden Gate Stages at present operates a passenger service between Santa Rosa and Sausalito and intermediate points and between Santa Rosa and Calistoga and intermediate points, in addition to service between Santa Rosa and Monte Rio and intermediate points. The testimony with respect to express service on the Santa Rosa-Calistoga operative right constitutes only a minor portion of the record and will be later adverted to.

As justification for the granting of a certificate of public convenience and necessity authorizing the proposed extension of passenger service between Santa Rosa and San Francisco applicant alleges (1) that there is now no direct transportation service by stage or railroad between Santa Rosa and Sausalito and intermediate points on the one hand, and San Francisco on the other hand, passengers being required to transfer at Sausalito to or from ferry boats operating between Sausalito and San Francisco; (2) that there is a large volume of travel over applicant's lines destined to or originating at Sausalito, of which

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a large proportion ultimately is destined to or originates at San Francisco; that such passengers are now obliged to change their means of transportation at Sausalito and at San Francisco, thereby suffering great inconvenience, annoyance and delay in respect to the transfer of such passengers and their baggage; (3) that there is a large volume of travel by persons and a demand for transportation of baggage between San Francisco and Santa Rosa and intermediate points by persons who do not desire to change means of transportation, but desire through transportation for themselves and their baggage; (4) that there is a large volume of travel by persons and demand for transportation of baggage between San Francisco and Santa Rosa and points intermediate, to points south of San Francisco.

Accompanying the application are the proposed tariff of fares, time schedules and a description of the equipment to be used.

At the hearing a number of witnesses were produced by applicant in support of the necessity for the proposed service.

A representative of the California Transit Company, who had made a survey of the situation, testified that of the ten to sixteen thousand passengers using the Golden Gate Stages, a least 60 per cent of them are destined to or emanate from San Francisco, the remaining 40 per cent being passengers between Sausalito and Santa Rosa and intermediate points.

The general manager and superintendent of a large ranch at Cotati, who had been thus engaged for 16 years, testified that he employed many men and that the present service is inadequate in that it does not deliver the discharged employees at destination, with resultant confusion and loss to them.

A number of witnesses from points north of Sausalito in the course of their testimony gave expression to a growing dissatisfaction over alleged discrimination against applicant company in that Pickwick Stages are permitted to operate from the north over the route here involved and through to San Francisco. This line can not, however, pick up any local passengers south of Windsor destined to San Francisco.

The proprietor of a hotel at Petaluma testified as to the inconvenience to passengers who desired to ride from that city to stage points south and east of San Francisco. For example, seven separate and distinct operations were necessary for a passenger desiring to travel by stage from Petaluma to San Jose with the various attendant annoyances involved in changing from stage to ferryboat, to street car, and finally to another stage.

The proprietor of a large garage at Petaluma employing from 15 to 30 men testified that he found it difficult to hire and retain mechanics from San Francisco on account of the inconvenience of getting to their

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destination with their luggage and mechanics' tools. Witness also had heard complaints daily from the general traveling public of present incomplete and unsatisfactory service.

The secretary of the Civic League of San Francisco, an improvement club composed of over a thousand individual members and some 60 civic organizations, testified as to the inadequacy of the present service. A passenger may take a through stage from San Francisco to points north of Santa Rosa, but when destined to points south he is required to make the usual changes from ferry to stage or train.

The secretary of the Santa Rosa Chamber of Commerce, with a membership of 325, testified that this organization had passed a resolution petitioning the Railroad Commission to grant to applicant the certificate herein sought and that such extension of service "would be a great public convenience and a real necessity to the traveling public and citizens of Santa Rosa." This witness also testified that the Chamber of Commerce passed said resolution upon the assumption that the increased service would not necessarily produce any diminution of the present rail service.

The president of one of the largest banks in Santa Rosa, who is also president of the Chamber of Commerce, testified that the proposed extension of service would be for the best interests of the community and tend to build up that particular section of the state.

The proprietor of the largest wholesale automotive replacement parts store in Sonoma County offered testimony as to the necessity for the establishment of the proposed service. He believed the dissatisfaction with the present service was caused by (1) alleged discrimination against Golden Gate Stages in not being permitted to run their stages across the bay to San Francisco; (2) inconvenience and annoyance of changing from and to ferry boats and stages at Sausalito; (3) inability to get a late service out of San Francisco to Santa Rosa; (4) inconvenience of procuring two tickets and transferring at Sausalito. He did not believe the granting of this certificate would injure the rail company to any appreciable extent.

A real estate dealer of Petaluma testified that it is impossible at the present time for residents of that community to go to San Francisco to attend a theatre in the evening without being compelled to leave before the conclusion of the performance in order to make the proper connections and reach home the same night. Witness believed that a stage leaving Fifth and Mission streets at 11.10 p.m., as proposed by applicant, would fulfill that requirement.

Applicant called as one of its witnesses the vice president of Golden Gate Stages, whose testimony covered a wide range, but in substance was a reiteration of all that had been testified to by preceding witnesses. First, there was the annoyance and inconvenience to passengers, espe-

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cially those with children and baggage, attendant upon their transfer at Sausalito. There also was the problem of automobile congestion on the highways which, in the judgment of witness, might be materially reduced, especially over week ends, by increased auto stage service. He held the opinion that many persons now using private automobiles in going from points north of Sausalito to San Francisco would be glad to avoid the unpleasant traffic congestion on the highway over week ends by availing themselves of through stage service. This company is carrying an ever-increasing number of automobiles on its ferry boats and the witness stated that over 8000 motor cars were transported by it on the Sunday preceding the date of his testimony. As to the demand for the proposed service, the witness stated that the company has from 10 to 15 telephone calls per day inquiring as to service and connections and that as a result of said inquiries prospective passengers exhibit a dissatisfaction with existing traffic arrangements at Sausalito. A careful test had been made of the time consumed in operating the stage from applicant's ferry terminal at the foot of Hyde street to Fifth and Mission streets, which showed an average running time of 14 minutes over the best route. Concluding his testimony witness declared he had estimated the distance from the Golden Gate Ferry landing at Sausalito to the Northwestern Pacific train bound for Santa Rosa at 900 feet, which would be approximately the distance a passenger would be required to walk in using that method of transportation on a trip to points north of Sausalito.

The auditor of applicant company testified that 90 per cent of their northbound passengers originate in San Francisco and he held the same ratio to prevail with respect to traffic coming toward San Francisco, the large majority of such passengers originating at points north of San Rafael. He introduced in evidence an exhibit purporting to be a travel study for several months during the past two years which indicated a downward trend of travel over the stage line. Another exhibit, setting forth the comparative passenger rates of stage and rail lines between San Francisco and Santa Rosa and intermediate points, showed the stage rates to be lower in practically all cases.

The record is replete with the testimony of many additional witnesses testifying to the need for the service here prayed for. It can serve no useful purpose to further analyze this testimony, all of which is of a more or less cumulative character.

Various exhibits were introduced in evidence by applicant, among them being copies of resolutions passed by county boards of supervisors, chambers of commerce, city councils and sundry civic organizations, all endorsing the proposed extension of service. Applicant also introduced an exhibit consisting of several hundred questionnaires signed

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by its patrons and all tending to indicate a demand for the proposed service.

The portion of the application dealing with an extension of passenger service between Santa Rosa and San Francisco was protested by the Northwestern Pacific Railroad Company, and seven witnesses were called in support of such protest, two of these being employees of the rail line.

A retail druggist of Santa Rosa, and former mayor of that city, opposed the granting of a certificate to applicant on the ground that the community did not require the additional service and that the extension of stage service through to San Francisco would take business away from Santa Rosa. This in substance was also the testimony of the assistant vice president of a Santa Rosa bank.

An exporter of hops, with headquarters in Santa Rosa, would oppose the extension of service unless it could be shown that such extension would not effect a substantial impairment of present rail service.

A retail lumber dealer of Santa Rosa expressed the belief that present available means of transportation between the points involved were adequate and that he would oppose any method of transportation which would detract from or impair the earnings of an established railroad.

Another witness called by this protestant was engaged in the insurance business and also president of a pickling and preserving establishment. He believed there was a serious hazard involved in carrying the loaded stages across the bay on ferry boats, and, in any event, that the present service answered all the requirements of adequacy and convenience.

The assistant general freight and passenger agent of the Northwestern Pacific Railroad Company testified as to the probable effect of the granting of this certificate upon the railroad's business, due to the competition of private automobiles. There has been a constantly increasing loss in rail operating revenues which, he thought, would be further aggravated by the establishment of additional stage service. He had made numerous inquiries and had ascertained that there existed no demand for the proposed service.

The final witness called by protestant rail line was its general freight and passenger agent, who introduced in evidence three exhibits. The first of these was a statement of revenues and expenses for a period of six years ending in 1926. This showed a decrease in passenger revenue over the period of $842,000 and a shrinking of the net income from a surplus of $204,156 to a deficit of $172,730. Another one of these exhibits was a comparative statement of passenger travel between San Francisco and Santa Rosa for the years 1920 to 1923, inclusive, and for 1926. This indicated a decrease of approximately 30 per cent

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in 1926, as against 1920, due, as alleged by witness, to the competition of privately owned automobiles and stage lines.

We have given careful consideration to this portion of applicant's proposal. The record unquestionably shows that present connections are unsatisfactory to the public and that there is a preponderating demand for the service proposed. Passengers boarding the stage at Santa Rosa and points south, with San Francisco as their destination, have a right in this day and age to expect transportation free from the aggravations and annoyances now attending their transfer at Sausalito from stage to ferry boat, and from ferry boat to street car at San Francisco. Many of the witnesses looked upon the present methods of transportation as extremely burdensome, if not archaic, and the record discloses a widespread and insistent demand for direct stage service into the heart of San Francisco. Applicant offers fourteen round trips daily, at intervals of one hour, with a late stage leaving Fifth and Mission at 11.10 p.m. to accommodate theatre-goers, as against six round trips now offered by the railroad company. The record contains considerable testimony regarding the relative merits of the Ferry Building and Fifth and Mission streets as terminal stations, but practically every witness for the applicant testified that Fifth and Mission would be a more convenient terminal, answering all the requirements of a central location. The convenience to the public involved in the additional service here asked for clearly outweighs the objections of protestants.

That portion of the application praying for an extension of service for the transportation of passengers and baggage between Santa Rosa and San Francisco will, therefore, be granted and the order will so show.

Applicant also requests a certificate of public convenience and necessity to operate a limited package and express service between Santa Rosa and Calistoga and intermediate points. The weight of such packages is to be limited to 100 pounds each and such property is to be transported only on the regular schedules operated in its passenger service and not otherwise. Three or four witnesses were called in support of this phase of the application and all testified to the present unsatisfactory express service. The evidence would seem to indicate an average service of two days for express parcels between santa Rosa and Calistoga, a distance of 20 miles. This part of the application was unopposed, and there appearing good and sufficient reasons for the establishment of the service the order will show that this feature of the application is granted.

Applicant is also hereby authorized to amend its rules and regulations governing the transportation of passengers, baggage and express in accordance with exhibits attached to its amended and supplemental application.

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We now come to a discussion of the evidence presented in Application No. 13447. By its amended application Pickwick Stages System seeks the authority of this Commission to transport express packages of limited weight between San Francisco and points north of Santa Rosa, and from points intermediate between San Francisco and Santa Rosa, both inclusive, and points north of Santa Rosa and to consolidate such service with the authorized operations now conducted by applicant under Decision No. 17078.

Briefly, applicant's present operative rights include authority to transport passengers, baggage and express from Santa Rosa north to Crescent City and intermediate points over the so-called Redwood Highway route, with the right to pick up and discharge passengers in the territory between Santa Rosa and San Francisco, inclusive, and intermediate points when such passengers are destined to or originate from Windsor and points north. In other words, it is desired to establish express rights coextensive with the passenger rights. Applicant proposes to operate such service over its present route and upon its present passenger stages and not to carrying packages in excess of 100 pounds each in weight.

Tariff of rates to be charged for said service and time schedules between the points to be served accompany the amended application.

It is alleged by applicant that there is a large volume of express to be so transported and that it has had repeated and urgent requests for the establishment of such service.

At the hearing witnesses were produced by applicant in support of the necessity for the proposed service. Many of these witnesses were agents and employees of the applicant company and their testimony related to demands at the various stations now maintained by applicant, as well as from individuals, pointing out the inconvenience of present rail facilities.

The application was protested by American Railway Express Company who introduced in evidence a written agreement between Pickwick Stages System and American Railway Express Company whereby it was agreed that the stage company should at stated times call at the express company's offices at Ukiah, Willits and Eureka and receive all freight packages consigned to addressees on the route of the stage company and deliver same to consignees. It was testified to by the express company's agent at Willits that there had been no complaint from shippers against this interchange service, and that shipments were received by the stage company at Willits and delivered to consignees at Hartsooks within two days and at Benbows within one day. This testimony, however, was not in entire harmony with that of a former agent of the stage company at Willits.

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The demand for improved express service for points north of Santa Rosa was most insistent from resort owners and managers along the line of the Redwood Highway. It is unnecessary to consider in detail the testimony of these agents. The record shows that there is a large number of these resorts along the route of the Redwood Highway, all remote from the rail line. As being typical, we refer to the testimony of the owner and manager of Hartsooks resort, situated 67 miles north of Willits on the highway. Most of their supplies come from San Francisco by rail to Willits or Eureka and thence by truck. Perishables are shipped to Eureka and then brought by auto truck to Garberville, ten miles distant, and from that point to destination by private truck. The average time required to get delivery of such shipments is three days. With stage service out of San Francisco at 6.40 at night, delivery would be made early the following morning. This resort has frequently sent its own cars into San Francisco, 209 miles distant, for perishable goods. Witnesses testified that present service was most unsatisfactory and that a through stage service would avoid inconvenience and loss due to transfer of shipments from rail to stage and then possibly to a third conveyance, especially for fresh vegetables, meats and fruit.

The Pickwick agent at Ukiah testified that he had had many requests for improved express service out of San Francisco, especially shipments such as automobile parts.

The manager of Triangle Parts Company of San Francisco testified that they shipped from four to ten packages per day, all emergency shipments, to points north of Santa Rosa and that there was considerable complaint over the delay in receiving such shipments.

The ticket agent of the Pickwick Stages System at San Francisco likewise testified as to the frequency of demand for better service from consignors of various types of shipments. Exhibits introduced in evidence by applicant Pickwick Stages shows two express services per day on passenger schedules to points north of Santa Rosa on the Redwood Highway, one leaving at 7.10 a.m. and the other at 6.40 p.m.

The route agent of protestant American Railway Express Company in charge of the district from San Francisco north to Korbel testified that he knew of no complaints as to service in this territory. He also made a comparison of certain rates showing schedules of the Pickwick Company to be greater than those of the express company and that the latter service included pickup and delivery.

From a review of the evidence in this matter, we are convinced that there exists a public need for the service here proposed. The territory along the route of the Redwood Highway is destined to become one of the outstanding pleasure grounds of California whither go every year thousands of tourists and where the number of resorts remote from the

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railroad is constantly increasing. For the convenience of these pleasure seekers and others the present available service can not be said to meet the requirements and the record clearly indicates its total inadequacy.

The application will therefore be granted, and authority will also be given applicant to effect a consolidation of operative rights herein granted with those granted pursuant to Decision No. 17078.

Upon full consideration of the evidence in the above entitled proceedings, we are of the opinion and hereby find as facts:

1. That public convenience and necessity require the operation by Golden Gate Stages of an automobile stage service for the transportation of passengers and baggage, as a common carrier, between Santa Rosa and San Francisco and intermediate points as an extension of applicant's present service between Santa Rosa and Sausalito; also, to operate a limited package and express service between Santa Rosa and Calistoga; also, to establish certain new rules and regulations governing the transportation of persons and baggage.

2. That public convenience and necessity require the extension by Pickwick Stages System of its present service between San Francisco and Eureka so as to enable it to transport express matter in packages not exceeding 100 pounds each in weight, on its passenger cars between San Francisco and points north of Santa Rosa, and from points intermediate between San Francisco and Santa Rosa and points north of Santa Rosa and the consolidation of such extension with the operations now conducted by applicant under authorization of this Commission.

An order will be entered accordingly.

ORDER.

Public hearings having been held in the above entitled applications, the matters having been duly consolidated and submitted, the Commission being now fully advised and basing its order on the findings of fact which appear in the foregoing opinion:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Golden Gate Stages of an automobile stage service for the transportation of passengers and baggage, as a common carrier, between Santa Rosa and San Francisco and intermediate points, as an extension of applicant's present service between Santa Rosa and Sausalito, with no local service between San Francisco and Sausalito; also, to operate an express service between Santa Rosa and Calistoga, and intermediate points, in packages not exceeding 100 pounds each in weight, such packages to be transported only on regular schedules operated in its passenger service and in none other than passenger-carrying vehicles; also, to establish certain new rules and regulations governing the transportation of persons and baggage.

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It is hereby ordered, that a certificate of public covenience and necessity for the foregoing service be and the same is hereby granted to Golden Gate Stages, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the extension by Pickwick Stages System of its present service between San Francisco and Eureka so as to enable it to transport express matter in packages not exceeding 100 pounds each in weight between San Francisco and points north of Santa Rosa, and from points intermediate between San Francisco and Santa Rosa and points north of Santa Rosa, with no local service between San Francisco and Santa Rosa and intermediate points, and the consolidation of such extension with the operations now conducted by applicant under authorization of this Commission in Decision No. 17078. Such service is to be conducted over applicant's present route and upon its present passenger stages and schedules.

It is hereby ordered, that a certificate of public convenience and necessity for the foregoing service be and the same is hereby granted to Pickwick Stages System, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discon-

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tinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreemnt on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twelfth day of March, 1928.

DECISION No. 19471.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES RAILWAY CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND ITS MELROSE AVENUE BUS LINE, COUNTY OF LOS ANGELES.

Application No. 14264.

Decided March 12, 1928.

CERTIFICATES—EXTENSION OF SERVICE.—Los Angeles Railway Corporation authorized to extend Melrose avenue bus line, in Los Angeles County, from intersection of Melrose and Western avenues to La Cienega boulevard.

Gibson, Dunn and Crutcher, by *Paul R. Watkins*, for Applicant.
Kidd, Schell and Delamer, by *H. W. Kidd*, for Motor Transit Co., Interested Party.
Warren E. Libby and *Frank B. Austin*, for Pickwick Stages, Interested Party.
J. Ogden Marsh, for Board of Public Utilities, City of Los Angeles, Interested Party.
John H. Harrington, President of West Hollywood Civic Body, appearing for Application.
George N. Senghush, for Rosewood District Improvement Association, Interested Party.

BY THE COMMISSION.

OPINION.

Los Angeles Railway, a corporation, applicant herein, seeks a certificate of public convenience and necessity to establish and maintain automobile bus service as an extension of its Melrose avenue rail line in the city of Los Angeles between Western avenue and the intersection of Melrose drive and La Cienega boulevard. The line as proposed is now in operation within the city limits of Los Angeles, that is, between Western avenue and Orlando avenue, under permit from the board of public utilities of the city of Los Angeles.

Public hearings herein were conducted by Examiner Williams in Los Angeles, at which time the matter was duly submitted and now is ready for decision. At the final hearing, applicant amended the application to request merging with its other operations.

Applicant proposes a slight extension of the bus service long maintained by it, in order to meet the requirements of the public, and also at the urging of the board of public utilities of the city of Los Angeles,

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whose engineer, Mr. J. Ogden Marsh, testified on behalf of applicant that the service has been long needed, but was beyond the power of the board of public utilities to authorize, being beyond the city limits of Los Angeles. The extension from the present terminus within the city of Los Angeles is only about 1000 feet and approximately 300 feet of this distance still remains in the city, so that the real extension in the county is only a matter of 700 feet more or less. It was explained by Mr. Marsh that Melrose avenue, between Orlando avenue and La Cienega boulevard, is not used because of the inability to turn buses at La Cienega boulevard, because the road is unpaved. Melrose drive, however, is paved and connects with Melrose avenue east of La Cienega. The rates to be charged are those established by applicant in its local and joint passenger bus tariff No. 8, C. R. C. No. 16, now on file with this Commission.

J. H. Harrington, testifying for residents west of La Cienega boulevard, explained that their interest is in having the extension terminate 4500 feet west from its present terminus, or about three-quarters of a mile west of La Cienega boulevard. He estimated there are 2000 persons in this district. The residents of this district do not oppose the extension asked in the application, but urge that the extension as proposed will benefit a large number by shortening the distance to the bus terminus. Applicant has declined to make an extension west of La Cienega boulevard, because another vehicle will be required.

The application herein was originally filed without the payment of the $50 fee required by the Public Utilities Act, for all certificates for the operation of auto passenger stages, it being the contention of applicant that it was a street railway corporation operating buses as defined in paragraph (*h*), section 2 of the Public Utilities Act, and also in section 30, paragraphs (*a*) and (*b*) of the Public Utilities Act, and not under sections 2¼ and 50¼ of said act, which latter sections relate to auto stage transportation companies In expectation of the legal questions raised by this action, appearances were made in order to present the law points as disputed by other carriers, but on February 20, applicant herein filed its check for $50 in payment of the filing fee required by section 50¼, and by agreement with other counsel, the legal aspects were abandoned in this proceeding.

With those legal obstacles removed, there is no reason why the application should not be granted as prayed for, as the extension is a short one and needed for the convenience of a large and rapidly growing area, and will be made by applicant promptly. An order accordingly will be entered.

ORDER.

Los Angeles Railway having made application to the Railroad Commission for a certificate of public convenience and necessity to extend

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its Melrose avenue bus line in the county of Los Angeles, a public hearing having been held, the matter having been duly submitted and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require establishment of the service as proposed by applicant herein over and along the following route: From the intersection of Melrose avenue and Western avenue, along Melrose avenue and Melrose drive to La Cienega boulevard; and

It is hereby ordered, that a certificate of public convenience and necessity therefor be and the same hereby is granted, subject to the following conditions:

1. Applicant shall file with this Commission, within a period of not to exceed ten days from date hereof, its written acceptance of the certificate herein granted, as an extension and enlargement of its present operative rights, and not as a new or separate right.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract of agreement on a basis satisfactory to the Railroad Commission.

For all other purposes, the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twelfth day of March, 1928.

DECISION No. 19472.

IN THE MATTER OF APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR AUTHORITY TO ABANDON SERVICE AND REMOVE ITS TRACK ON AVENUE SIXTY-FOUR IN THE CITY OF LOS ANGELES, AND FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE OPERATION OF A MOTOR COACH LINE AS SUBSTITUTE THEREFOR.

Application No. 14301.

Decided March 12, 1928.

AUTOMOTIVE TRANSPORTATION—SUBSTITUTION FOR RAIL SERVICE.—Pacific Electric Railway Company authorized to abandon service on Avenue 64 in Los Angeles. 23—56862

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and to operate bus service between Avenue 64 and Roble avenue in Los Angeles, and Arroyo drive and La Loma road in Pasadena.

C. W. Cornell, for Applicant.
L. A. Diether, Deputy City Attorney, for City of Pasadena.
J. O. Marsh, Chief Engineer, Board of Public Utilities and Transportation, for City of Los Angeles.
George E. Waldo, for San Rafael Heights Residents.

BY THE COMMISSION.

OPINION.

This is an application of Pacific Electric Railway Company for authority to abandon service and remove its track on Avenue 64 in the city of Los Angeles, and for a certificate of public convenience and necessity for the operation of a motor coach line as substitute therefor.

A public hearing was conducted by Examiner Williams at Los Angeles on February 4, 1928, at which time the matter was submitted.

The line operated on Avenue 64, commonly known as the Annandale line, is a portion of the Los Angeles local lines of applicant. The southerly terminus of the line is at the junction with the South Pasadena-Los Angeles line at Avenue 64 and Roble avenue. The northerly terminus is at the south city limits of Pasadena near Adelaide place. The line is approximately 4000 feet in length, of which approximately 2400 feet is double tracked. Operation is carried on by means of a one-man shuttle car on a twenty-minute headway. Connection is made and transfers issued at the southerly end of line with the South Pasadena-Los Angeles local line. At the northerly end, connection is made with the La Loma road motor coach line of the Pasadena local service.

L. E. St. John, assistant auditor for applicant, testified that the estimated railway operating loss on this line for twelve months ending November 30, 1927, was $2,964.13. This statement, however, included certain general expenses, and for the purpose of showing the out-of-pocket saving which could be effected through abandonment of service, an additional statement was requested. This statement, which was filed subsequent to the day of hearing by applicant, shows that the net loss of the line on out-of-pocket basis was $2,549.87 for the same period. It may be concluded, therefore, that the saving to be made by the company through abandonment of this line is approximately $2,500 annually.

It is further shown by applicant that the city has passed an ordinance of intention to pave Avenue 64 between Roble avenue and Pasadena avenue. Such an improvement will necessitate the reconstruction of existing tracks with grooved girder rails and asphalt paving, at an estimated cost of $10,837. Applicant contends that the present and prospective earnings of the line do not justify the additional investment required to continue its operation.

O. A. Smith, passenger traffic manager for the Pacific Electric, testified that his company proposed to extend the La Loma road motor

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coach line, which is now operated as a portion of the Pasadena local service of applicant, southerly along Avenue 64 to the junction with the South Pasadena-Los Angeles rail line. This extension, he stated, could be made without placing additional motor coaches in service on the La Loma road line, and without additional labor costs. The headway, however, on this line is thirty minutes instead of the present twenty-minute headway on the Annandale rail line. He stated that there would be a net increase in income to the company of $6,000 per year through the carrying out of the changes proposed in the application, namely, the abandonment of the rail line and the operation of the motor coach line as a substitute therefor.

Applicant proposes to continue the same fares in the bus service as have been charged under applicant's local passenger tariff No. 816, C. R. C. No. 1000 (seventh revised page 36 and twenty-fifth revised page 16).

There is attached to the application a letter signed by the secretary of the Board of Public Utilities and Transportation of the city of Los Angeles, consenting to the changes as proposed herein by applicant. No protests against the granting of the application were entered at the hearing.

From a consideration of all of the evidence in this matter, we conclude that the application for authority to abandon service and remove its track on Avenue 64 in the city of Los Angeles and for a certificate of public convenience and necessity for the operation of a motor coach as substitute therefor, as prayed for, should be granted.

ORDER.

Pacific Electric Railway Company, a corporation, having applied for authority to abandon service and remove its track on Avenue 64 in the city of Los Angeles, and for a certificate of public convenience and necessity for the operation of a motor coach line as substitute therefor, a public hearing having been held, the matter being under submission and now ready for decision; therefore,

It is hereby ordered, that Pacific Electric Railway Company, a corporation, be and it is hereby authorized to abandon service and remove its track on Avenue 64 in the city of Los Angeles, said line to be abandoned being described as follows:

Commencing at the intersection of the South Pasadena line of the Pacific Electric Railway with Avenue 64, in the city of Los Angeles, county of Los Angeles, State of California; thence northeasterly along Avenue 64 to the south limits of the city of Pasadena, and as shown in yellow on blue print map C. E. H. 10997-a, attached to the application.

It is hereby further ordered, that a certificate of public convenience and necessity be and the same hereby is granted to applicant herein

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to establish motor bus service, as a part of and in conjunction with its street railroad as a common carrier of passengers between Avenue 64 and Roble avenue in the city of Los Angeles and Arroyo drive and La Loma road in the city of Pasadena, over and along the following route:

Commencing at the intersection of Arroyo drive and La Loma road, thence westerly on La Loma road to San Rafael avenue, thence northerly on San Rafael avenue to Nithsdale road, thence westerly on Nithsdale road to Avenue 64, thence southerly on Avenue 64 to Roble avenue; subject to the following conditions:

1. Applicant shall file with this Commission, within a period of not to exceed ten days from date hereof, its written acceptance of the certificate herein granted as an extension and enlargement of its present operative rights, and not as a new or separate right.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twelfth day of March, 1928.

DECISION NO. 19476.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, (a) FOR PERMISSION TO ABANDON ITS AUTOMOBILE STAGE SERVICE BETWEEN CALIPATRIA AND NILAND, IMPERIAL COUNTY, CALIFORNIA; AND (b) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND AND OPERATE ITS AUTOMOBILE STAGE SERVICE AS A CARRIER OF PASSENGERS, BAGGAGE AND EXPRESS ON AN ALTERNATE ROUTING, TURNING OFF FROM THE MAIN HIGHWAY LOS ANGELES-IMPERIAL VALLEY AT WHITEWATER, GOING THROUGH PALM SPRINGS, CATHEDRAL CITY AND INDIAN WELLS AND RETURNING TO THE MAIN HIGHWAY AT INDIO, INVOLVING AN EXTENSION OF SERVICE FROM PALM SPRINGS TO INDIO.

Application No. 14181.

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Decided March 12, 1928.

AUTOMOTIVE TRANSPORTATION—CERTIFICATE—ABANDONMENT.—Pickwick Stages System authorized to abandon stage service between Calipatria and Niland, Imperial County, and to operate between Palm Springs and Indio as an extension of present service.

AUTOMOTIVE TRANSPORTATION—SERVICE—ABANDONMENT.—Authorization to abandon branch line stage service was authorized where conducted at a loss without prospect of future growth, continued operation would be a burden upon other lines, and ample rail transportation service was available.

VALUATION—INTANGIBLES—OPERATIVE RIGHTS.—Operative rights should not be capitalized nor used as an element of value in rate proceedings.

Warren E. Libby, for Applicant.
Joseph Hellen, for Southern Pacific Company, Protestant.
M. T. Thompson, for American Railway Express Company, Protestant.
Frank L. Miller, for Charles Crandall, Protestant.

BY THE COMMISSION.

OPINION.

Pickwick Stages System, a corporation, has petitioned the Railroad Commission for an order authorizing the abandonment of its automobile stage service between Calipatria and Niland, Imperial County, California.

Applicant has also petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile stage line as a common carrier of passengers, baggage and express between Palm Springs and Indio, serving Cathedral City, Indian Wells and intermediate points as an extension of its present service between Whitewater and Palm Springs, and also for an order permitting it to reroute a portion of its schedules between Los Angeles and Imperial Valley points, diverging from the main highway at Whitewater, thence by the county road via Palm Springs, Cathedral City and Indian Wells, returning to the main highway at Indio, together with the authority to consolidate said proposed extended service and said rerouting with its system of automobile stage lines.

A map of the section of the highway affected by the application to abandon said service between Calipatria and Niland is marked Exhibit "B" and attached to said application.

Applicant proposes to charge rates for the alternative route in accordance with Exhibit "C" attached to said application.

Applicant also proposes to operate over said alternative route only one of its four daily schedules now being operated between Los Angeles and Imperial Valley points in accordance with its time schedules as appearing of record in the files of this Commission.

There was no opposition to the granting of the proposed abandonment of service between Calipatria and Niland. Southern Pacific Company, American Railway Express Company and Charles Crandall, owner of Palm Springs Auto Line, protested the granting of the proposed extension and rerouting.

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A public hearing on said application was conducted before Examiner Satterwhite at Palm Springs, the matter was submitted and is now ready for decision.

The evidence in support of the proposed abandonment of service between Calipatria and Niland shows that this operative right is part of a branch line extending from Brawley via Calipatria to Niland and connecting at Brawley with applicant's main line between Los Angeles and El Centro. Calipatria is an intermediate point on this branch line about 13 miles north of Brawley and 9 miles south of Niland, a total distance of 22 miles. This operative right between Calipatria and Niland was originally authorized as an extension of the service theretofore conducted by the United Stages, Inc. Four or five years ago Niland was a thriving and growing town and for a considerable period this branch line was well patronized and operations were profitable. In recent years development of this community has ceased and its population has very materially decreased, with the result that the volume of passenger travel has steadily and rapidly declined. The stage service of applicant is now conducted at a loss and there is no prospect of any future growth or improvement.

The record shows that during the months of June, July and August, in 1927, applicant transported between Niland and Calipatria in both directions a total of 53 passengers, the revenue derived therefrom aggregating the sum of $25.45, the total operating expense incidental to said service being $284.40 and the losses accruing amounting to $258.95. The testimony of applicant shows that the continued operation of this branch service will be a burden upon its other lines. At the present time applicant operates but one schedule in each direction between said points, but the passenger travel is entirely insufficient to support even one daily schedule. It was shown that Niland is a junction point upon the main railroad line of the Southern Pacific Company extending easterly from the city of Los Angeles in the State of California, and that a branch railroad line connects with the main line at Niland extending southerly to Calexico, which serves the way-points of Calipatria, Brawley and El Centro. There are four trains in each direction operated daily over this branch line by the Southern Pacific Company. It is quite evident that the foregoing train service is more than adequate for the needs of the traveling public between Niland and Calipatria and we are of the opinion that, in view of the existing rail service, the discontinuance of applicant's stage service will cause no public inconvenience and leave these communities with ample rail transportation service and the application for the abandonment of said service should be granted.

The record shows in connection with the proposed extension of service between Palm Springs and Indio and the alternative routing

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that the stage service between Los Angeles and Imperial Valley points by way of Banning now owned by the Pickwick Stages System was formerly operated by United Stages, Inc. It appears that the route over which the United Stages operated passed through Banning, Palm Springs and Indio, which was then the principal highway between Los Angeles and Imperial Valley points. Several years ago that portion of the highway between Banning and Indio was reconstructed by the State Highway Commission so as to parallel the railroad line of the Southern Pacific Company, which eliminated the community of Palm Springs from said route. The evidence shows that the United Stages on or about June, 1924, was authorized by this Commission to reroute its through service over this new state highway by way of Banning and Indio, together with permission to operate a stub service between Banning and Palm Springs and this stub service is still being conducted by applicant.

The evidence shows that within the last two years there has been a very material growth and development of the territory over and along the former stage route between Palm Springs and Indio. Several real estate projects at Araby and Cathedral City and other points are in course of development and considerable agricultural development has taken place. There has been a substantial increase in the number of farms and ranches along this route and the population has very materially increased. Many new homes have been built at Cathedral City and other points along the route. Palm Springs also has made a very marked growth and several new hotels have been built and are now operating. not only at Palm Springs, but at other points along the route as far as Indio. The testimony shows that the present stub service between Banning and Palm Springs is not adequate to meet the needs of the communities along this former route and there are frequent requests at the stage offices of the applicant, both at Palm Springs and Indio and other points, for the proposed extended service and the proposed alternative routing of stages. The applicant operates what is known as a circle tour by way of San Diego, passing through Imperial Valley and returning via Palm Springs and vice versa over what is known as the short line route. Many travelers and tourists who avail themselves of this circle tour make frequent requests for stop-overs at Palm Springs and other points and this proposed extension, which will be operated as a through service, will permit the desired stop-overs. It was shown that the establishment of this proposed service will result in a reduction in the fare between Palm Springs and Indio, the present fare being $1.60, applicable over the circuitous route between Palm Springs, Whitewater and Indio, the proposed fare over the direct extension from Palm Springs to Indio being $1. There will be no increase in through fares by the establishment of the alterna-

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tive route herein sought, as the existing through fares will be applicable where stages are diverted over the proposed alternative route. Applicant proposes to operate over the alternative route the stage which leaves Los Angeles at 8.15 a.m. and the stage which leaves El Centro at 8 a. m. daily. It appears that the road between Palm Springs and Indio is in good condition and will afford a feasible route for the proposed extended operation.

With reference to the proposed express service, the evidence shows that there will be a very material demand for the transportation of supplies for the hotels, as well as the farmers and various business enterprises doing business along the proposed extension. The express to be transported, however, will be only such as may be transported on the passenger vehicles of applicant and no package weighing in excess of 75 pounds shall be carried.

The Southern Pacific Company offered evidence to the effect that it operates a satisfactory train service between Los Angeles and Palm Springs station and there are six trains daily in each direction which are available to all passengers desiring to go to Palm Springs and other points.

C. W. Crandall, who operates a local passenger and freight service between Palm Springs station and Palm Springs, testified that he meets regularly the two local trains daily in and out of Palm Springs station and all other trains by special call or request. The record shows, however, that the proposed extended service sought by applicant will have little effect upon the local stage service conducted by C. W. Crandall.

The applicant is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited to the number of rights which may be given.

After careful consideration of all the evidence in this proceeding, we are of the opinion that the discontinuance and abandonment of applicant's stage service between Calipatria and Niland should be granted.

We are also of the opinion that the proposed extension of applicant's stage service between Palm Springs and Indio, together with the desired alternative routing, should be granted.

ORDER.

A public hearing having been held in the above entitled application, the matter having been submitted and being now ready for decision;

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It is hereby ordered, that the application of Pickwick Stages System, Inc., a corporation, for authority to abandon its stage service between Calipatria and Niland, Imperial County, California, be and the same is hereby granted, provided that Pickwick Stages System shall make tariff filings in accordance with General Order No. 79, canceling rates in effect between Calipatria and Niland, also such necessary time schedule supplements canceling schedules between said points.

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Pickwick Stages System, Inc., a corporation, of an automobile stage line as a common carrier of passengers, baggage and express between Palm Springs and Indio, serving Cathedral City, Indian Wells and intermediate points, as an extension of its present service between Whitewater and Palm Springs; and also requires the rerouting of one of its four daily schedules now operated between Los Angeles and Imperial Valley points, diverging from the main highway at Whitewater, thence by the county road via Palm Springs, Cathedral City and Indian Wells, returning to the main highway at Indio, together with the authority to consolidate the foregoing extension of service and foregoing rerouting with its system of automobile stage lines, as particularly set out and described in paragraph 2 of applicant's amended and supplemental application.

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to Pickwick Stages System, Inc., a corporation, for the operation of the extension and for the alternative rerouting hereinabove described, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

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The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twelfth day of March, 1928.

DECISION No. 19504.

IN THE MATTER OF THE APPLICATION OF THE CALIFORNIA-OREGON POWER COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, AUTHORIZING THE ISSUANCE AND SALE OF STOCK.

Application No. 14419.

Decided March 21, 1928.

SECURITY ISSUES—STOCK.—The California-Oregon Power Company authorized to issue and sell 15,000 shares of 6 per cent preferred stock of an aggregate par value of $1,500,000 at not less than $99 per share to finance additions and betterments.

Brobeck, Phleger and Harrison, by *H. H. Phleger* and *T. R. Meyer*, for Applicant.

BY THE COMMISSION.

OPINION.

In the above entitled application, as amended at the public hearing held before Examiner Fankhauser, The California-Oregon Power Company asks the Railroad Commission to make an order authorizing it to issue and sell 15,000 shares of its 6 per cent preferred stock, series of 1927, of the aggregate par value of $1,500,000, at not less than $99 a share and to use $5 per share of stock sold to pay commissions and expenses incident to the sale of stock and to use the remaining proceeds to finance, in part, the cost of new construction and additions to and betterments of its plants and properties during the year 1928.

The California-Oregon Power Company has an authorized capital stock of $30,000,000, consisting of 300,000 shares of the par value of $100 each, divided into $15,000,000 of common stock, $4,420,000 of 7 per cent cumulative preferred stock, $1,000,000 of 6 per cent cumulative preferred stock, and $9,580,000 of 6 per cent cumulative preferred stock, series of 1927, which is callable at 110. The outstanding stock, as of December 31, 1927, is reported as follows:

Common stock	$4,441,100 00
Seven per cent preferred stock	4,340,200 00
Six per cent preferred stock	987,300 00
Six per cent preferred stock, series of 1927	853,200 00
Total	$10,621,800 00

The Commission heretofore has authorized the issue of all the authorized 7 per cent and 6 per cent preferred stocks, other than series of 1927, although not all of such stocks as yet have been issued. It has also, by Decision No. 18962, dated October 25, 1927, authorized the issue and sale of $1,500,000 of the 6 per cent preferred stock, series of

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1927, which, according to the testimony herein, while not yet actually issued, has all been sold, at prices ranging from $96 to $99 a share. The company reports that it is necessary for it to sell additional stock to meet its capital requirements.

In support of the request to sell additional stock the company, in its Exhibit No. 1, estimates its capital expenditures for the year 1928 as follows:

To complete Prospect hydro-electric plant	$504,386 00
To complete transmission line—Prospect to Copco	239,539 00
Miscellaneous additions and betterments, line extensions, etc.	1,179,122 00
Total	$1,923,047 00

It proposes to obtain the funds for its construction program from the following sources:

From sale, at 94, of the $1,500,000 of preferred stock referred to in this application	$1,410,000 00	
Less estimated installment contracts outstanding on December 31, 1928	235,000 00	
		$1,175,000 00
From subscribers to capital stock on installment contracts outstanding on January 1, 1928		332,000 00
From preferred stock authorized by former decisions and unsold on January 1, 1928		231,000 00
From accrual in depreciation reserve		192,000 00
Total		$1,930,000 00

ORDER.

The California-Oregon Power Company having applied to the Railroad Commission for permission to issue and sell $1,500,000 of stock, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through such issue is reasonably required for the purpose specified herein, and that the expenditures for the purposes herein authorized are not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that The California-Oregon Power Company be and it is hereby authorized to issue and sell, on or before December 31, 1928, at not less than $99 per share, 15,000 shares of its 6 per cent preferred stock, series of 1927, of the aggregate par value of $1,500,000 and to use, if necessary, an amount not exceeding $5 per share of stock sold to pay commissions and expenses incident to the sale of the stock, and to use the remaining proceeds, and such portion of the $5 not needed to pay commissions and expenses incident to the sale of stock, to finance in part the cost of the new construction and the additions to and betterments of its plants and properties during the year 1928, referred to in the foregoing opinion.

The authority herein granted is subject to the following conditions:

1. Only such expenditures as are properly chargeable to fixed capital

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accounts under the uniform systems of accounts prescribed by this Commission may be financed with the proceeds from the sale of the stock herein authorized to be issued and sold.

2. Applicant shall keep such record of the issue and sale of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted will become effective upon the filing of a written acceptance of such authority.

Dated at San Francisco, California, this twenty-first day of March, 1928.

DECISION No. 19506.

IN THE MATTER OF THE APPLICATION OF THE CITY OF MARYSVILLE, A MUNICIPAL CORPORATION, THAT THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA FIX AND DETERMINE THE JUST COMPENSATION TO BE PAID BY THE SAID CITY OF MARYSVILLE FOR THE WATER SYSTEM OF THE MARYSVILLE WATER COMPANY, A CORPORATION.

Application No. 10302.

Decided March 21, 1928.

REHEARING.—Application of Marysville Water Company for rehearing and reopening of Decision No. 19402 (31 C. R. C. 252) denied.

BY THE COMMISSION.

ORDER DENYING REHEARING.

Marysville Water Company, a corporation, having filed a petition for rehearing of Decision No. 19402 of this Commission dated February 25, 1928, and in said petition having requested a reopening of the above entitled application for the purpose of determining that the Commission's finding as to just compensation as contained in Decision No. 17794, dated December 21, 1926, shall no longer be of any force and effect, the Commission having fully considered the petition for rehearing, and each and every allegation thereof, and being of the opinion that no good cause appears for the granting thereof, and having further considered the application for a reopening of the above entitled application for the purpose above set forth, and being of the opinion that we have no jurisdiction after reopening the matter to make the determination prayed for; now therefore,

It is hereby ordered, that the petition for a rehearing be and the same is hereby denied.

It is hereby further ordered, that the application for a reopening of the above entitled application for the purpose of determining that the

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finding of this Commission as to just compensation contained in Decision No. 17794 shall no longer be of any force and effect, be and the same is hereby denied.

Dated at San Francisco, California, this twenty-first day of March, 1928.

DECISION No. 19507.

IN THE MATTER OF THE APPLICATION OF W. L. WARNER, OPERATING UNDER THE FICTITIOUS NAME OF SACRAMENTO AUTO TRUCK COMPANY, FOR AN ORDER GRANTING PERMISSION TO ESTABLISH REVISED RATES, RULES AND REGULATIONS AND ADOPT NORTHERN CALIFORNIA AUTO TRAFFIC BUREAU FREIGHT CLASSIFICATION TO GOVERN THE TRANSPORTATION OF PROPERTY BY AUTO TRUCK BETWEEN SACRAMENTO, DAVIS AND WOODLAND.

Application No. 14266.

Decided March 21, 1928.

RATES—AUTO TRUCK.—Sacramento Auto Truck Company authorized to revise rates and to adopt the Northern California Auto Traffic Bureau Freight Classification.

DEPRECIATION.—No depreciation should be charged against properties which have already been depreciated one hundred per cent.

W. L. Warner, in propria persona.

BY THE COMMISSION.

OPINION.

This is an application by W. L. Warner, owner of an automobile truck line operated under the fictitious name of the Sacramento Auto Truck Company, between Sacramento and Woodland, via Davis, seeking permission under the provisions of section 4, Auto Stage and Truck Transportation Act, and of rule No. 21 of General Order No. 80, to publish a revised freight tariff showing class and commodity rates and rules and regulations governing the same, also to adopt the Northern California Auto Traffic Bureau Freight Classification. The proposed rates are as shown in Exhibit "A," attached to and made a part of the application, and will result in both increases and reductions.

A public hearing was held at Sacramento before Examiner Geary on March 13, 1927, and the matter having been submitted is now ready for our opinion and order.

The application sets forth that the present tariff provides for only three class rates and is governed by the individual classification of the applicant, which contains but a few commodities and therefore is not suitable to the very large number of commodities now being transported.

This applicant also operates the Winters Truck Company, serving Sacramento, Davis and Winters, and the two operations parallel each

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other between Sacramento and Davis. The freight rates via these truck lines, although owned by one operator, are not the same. Some of these rates between Sacramento and Davis are higher by the Sacramento Auto Truck Company than via the Winters Truck Company and in other cases they are lower. The gravamen of the application is to equalize the rates between Sacramento and Davis and remove the controversy brought about by the conflicts in the rates.

The operations between Sacramento and Woodland involved in this proceeding were originally granted to C. M. Ray, Application No. 3832. Ray transferred to Warner and Nickerson, Application No. 6271. Nickerson transferred to W. L. Warner, Application No. 8432. By authority of Application No. 10939 Warner purchased the operating rights of Claude Sears between Sacramento, Davis and Winters, and as heretofore stated Warner now operates two independent lines between Sacramento and Davis, with rates which are not on a parity.

The annual reports for the years 1925, 1926 and 1927 consolidate the revenues and expenses of the Sacramento Auto Truck Line and the Winters Auto Truck Line, and it is therefore impossible to ascertain just what the net profit or loss was in connection with either operation. The combined operations during these three years show the following results:

1925 net operating profit	$3 60
1926 net operating loss	464 46
1927 net operating profit	590 79

The favorable results obtained in 1927 were due in part to the fact that in this year applicant purchased two new trucks and as a result the expense item for repairs was reduced (comparing 1926 with 1927) from $1,127.42 to $757.23, or $370.19. Depreciation charge was likewise reduced. In 1926 it was $2,400 and in 1927, $1,900, a reduction of $500. Apparently from the testimony given the depreciation charge in 1926 was in excess of the requirements by reason of the fact that certain of the automobiles had already been depreciated their total value. Applicant should correct this situation and in future charge no depreciation against properties which have already been depreciated 100 per cent.

The total assets of applicant as of December 31, 1927, were $9,837. The revenue under the proposed rates can not be accurately estimated, but from a check made of the tonnage January 1 to June 30, 1927, the proposed rates will increase revenue approximately $400 per annum.

The freight rates between Sacramento and Davis should be the same via both truck lines operated by this applicant, and from the facts developed it is manifest that additional revenue is needed and applicant should be authorized to publish the proposed changes.

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We conclude and find, in view of the circumstances of record in this proceeding, that the present freight rates are unreasonable and that applicant should be permitted to establish the class and commodity rates as set forth in Exhibit "A" attached to and made part of the application.

ORDER.

This application having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the preceding opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that W. L. Warner, doing business under the fictitious name and style of the Sacramento Auto Truck Company, be and he is hereby authorized to establish within twenty days from the date herof, in appropriate tariffs, the freight rates applying between Sacramento, Davis and Woodland as set forth in Exhibit "A" attached to and made part of the application.

Dated at San Francisco, California, this twenty-first day of March, 1928.

DECISION No. 19508.

BAKERSFIELD AND LOS ANGELES FAST FREIGHT COMPANY, A CORPORATION, AND LOS ANGELES AND WEST SIDE TRANSPORTATION COMPANY, A CORPORATION,

vs.

WALTER WILLHOUR AND WILLHOUR TRUCK COMPANY.

Case No. 2394.

Decided March 21, 1928.

AUTOMOTIVE TRANSPORTATION—ILLEGAL OPERATION.—W. Willhour and Willhour Truck Company directed to cease illegal truck operation between Los Angeles and Los Angeles Harbor and Bakersfield and Taft. Certificate granted by Decision 14939 (26 C. R. C. 479) revoked.

AUTOMOTIVE TRANSPORTATION—WHAT CONSTITUTES—CONTRACT CARRIERS.—An individual operating motor trucks under alleged verbal contracts made for no specific period of time or for any specific volume or amount of tonnage, carrying no obligation on the part of the shipper to patronize the service, was held to be operating trucks as a common carrier.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION.—In ordering the cessation of common carrier truck operation without the necessary certificate, copies of said order were forwarded to the district attorneys of the counties in which such operation was conducted.

Hugh Gordon, for Complainants.
John M. Herron, for Defendants.
W. S. Johnson, for Southern Pacific Company.

BY THE COMMISSION.

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OPINION.

Bakersfield and Los Angeles Fast Freight Company, a corporation, and Los Angeles and West Side Transportation Company, a corporation, have filed complaint against Walter Willhour and Willhour Truck Company alleging that said Walter Willhour has operated and now continues to operate auto trucks in the business of transporting property, for compensation, over the public highways in this state between fixed termini and over a regular route, to wit, between Los Angeles and Bakersfield, Taft, Maricopa, Fellows and other points in the San Joaquin Valley, and points intermediate between Los Angeles and Bakersfield over the Ridge Route; and that in such operation defendant Walter Willhour has operated, and continues to operate, as a transportation company as defined by the Auto Stage and Truck Act (chapter 213, Statutes of 1917, and effective amendments thereto) in the transportation of general merchandise of a kind and character different from that specified in this Commission's Decision No. 14939 on Application No. 10891, as decided May 15, 1925, granting to said Walter Willhour authority for the transportation of cotton, cotton seed, cotton products and cotton gin supplies between Bakersfield, Weed Patch, Arvin, Lamont, Magunden, Shafter, Wasco, McFarland, Delano, Corcoran, Fresno, Porterville, Mendota, Firebaugh, Madera and Merced, and Los Angeles and Los Angeles Harbor, and bebtween Bakersfield, Weed Patch, Arvin, Lamont and Magunden, and Fresno, Mendota and Firebaugh, and between Corcoran and Fresno or Bakersfield, and to or between no other points, over and along main traveled roads to and from the state highway between Merced and Los Angeles, thence to Los Angeles and Los Angeles Harbor; that defendant Willhour Truck Company has for more than six months prior to the filing of the complaint operated and is now engaged in the operation of auto trucks in the business of transporting property over the public highways between fixed termini and over a regular route, to wit, between Los Angeles and Bakersfield, Taft, Maricopa, Fellows and other points in the San Joaquin Valley and points intermediate between Los Angeles and Bakersfield, over the Ridge Route, without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity required such operation; and that in such operation defendant Willhour Truck Company has held itself out and does hold itself out to transport property for a large number of shippers and has engaged generally in a transportation business and has accepted for shipment and transported property for all who sought said defendant for that purpose.

Complainants pray for an order canceling and revoking the certificate of public convenience and necessity heretofore granted to defendant Walter Willhour; and that each of the defendants be

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restrained from further operation of auto trucks over the highways for the transportation of freight, for compensation, between fixed termini or over regular routes without first having obtained a certificate from this Commission declaring that public convenience and necessity require such operation.

Defendants duly filed their answer herein, same being a general denial of the allegations of complainants and alleging that all transportation herein complained of has been conducted by Walter Willhour under the fictitious name of Willhour Trucking Company and that a certificate of fictitious name has been filed by Willhour Trucking Company, as required by law.

A public hearing on this complaint was conducted by Examiner Handford at Los Angeles, the matter was duly submitted and is now ready for decision.

Walter Willhour, called as a witness for complainants, testified that he was the owner of the certificate granted by the Railroad Commission's Decision No. 14959 on Application No. 10891, as decided May 15, 1925, and that no other authority had been obtained from the Commission; that he had been operating under the fictitious name of Willhour Trucking Company, having filed a certificate of fictitious name with the county clerk of Kern County on June 11, 1925; and that all hauling had been done under said fictitious name. Defendant owns six trucks and six trailers and has been in the general trucking business. Cotton has been hauled at the tariff rate as filed with the Railroad Commission and other rates have been used for other commodities. No regular rate schedule had been established for commodities, other than cotton, it being the practice to give a price on each piece of work. Witness has not advertised for business, obtaining same by personal solicitation. Defendant operates his trucks anywhere that business requires, using the Ridge route for trips between Los Angeles and Bakersfield or Taft. No terminal has ever been maintained in the city of Los Angeles and business has been refused when tendered by some shippers, due to the fact that trucks were busy or that the rate offered was not satisfactory.

J. M. Champion, a resident of Bakersfield, testified that he was employed by Willhour Trucking Company from February to May, 1927, at Bakersfield as a dispatcher of trucks, also making collections and assisting in the office, being in charge of the Bakersfield operations during the absence of defendant Willhour. Seventy-five per cent of the business transacted was consigned from Los Angeles to Bakersfield or Taft. Witness solicited business from consignees, either on Willhour's suggestion or on his own judgment as to the securing of business. Witness during his employment with Willhour Truck Company

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had nothing to do with the operation of trucks at Los Angeles but had observed loads brought from that point daily and consignees paying freight charges on business that he had solicited. Very little hauling, except cotton, was done from Bakersfield to Los Angeles during the time of witness' employment. Some of the consignees for whom hauling had been done, their location, and the commodities hauled were as follows:

Consignee	*Location*	*Commodity*
Acme Beverage Co.	Bakersfield	Beverages and Mineral Water
Kern Plumbing Co.	Bakersfield	Plumbing Supplies
United Iron and Metal Co.	Bakersfield	Plumbing Supplies
Suburban Plumbing Co.	Bakersfield	Plumbing Supplies
Associated Supply Co.	Bakersfield	Oil Well Supplies
Cal. National Supply Co.	Bakersfield	Oil Well Supplies
Pacific Ready Cut Houses	Bakersfield	Building Materials
Furniture Exchange	Bakersfield	Furniture
Western Pipe & Steel Co.	Bakersfield	Tanks and Pipe
Consolidated Pipe Co.	Bakersfield	Sheet Iron
Allard Furniture Co.	Bakersfield	Building Lumber
Ensco Company	Taft	
West Side Coco Cola Bottling Works	Taft	Beverages
Taft Soda Works	Taft	Beverages
A. H. Carpey	Bakersfield	Hardware and Agricultural Implements
King Lumber Co.	Bakersfield	Stucco Rock Products and Brick
Builders Supply Co.	Bakersfield	Plumbing Supplies
Kern Valley Packing Co.	5 miles south of Bakersfield	Commercial Fertilizer and Tallow (Hauled to Los Angeles)

H. S. Simmons, residing at Bakersfield, testified that he was employed as a driver for the Willhour Trucking Company for about one year, leaving its employment in April, 1927; that he operated trucks for defendant all over Kern County and between Los Angeles and Bakersfield or Taft. Witness hauled cotton from Bakersfield to Los Angeles harbor and on return loads had picked up shipments in Los Angeles destined to Bakersfield and Taft, some with final delivery at oil field leases in Kern County; and that these shipments consisted of various commodities, usually in truck load lots, and were picked up at the shipper's place of business, no terminal being maintained in the city of Los Angeles. Witness, when employed as a driver for defendant, hauled everything that was offered for movement and only refused one load when a prospective customer complained that the rate was too high. Witness operated on no regular schedule and knew nothing regarding contracts existing between defendant and shippers or consignees. Approximately 80 per cent of the hauling on trucks operated by this witness was between Los Angeles and Bakersfield or Taft.

L. V. Branch, employed as a traffic solicitor for complainants, testified as to his knowledge of the business transacted by defendant, his acquaintance with shippers and some of the consignees; that the operation of defendant had affected the business of complainants in that

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many shippers would have used the service of complainants if defendant had not been operating; and that a representative of the Standard Oil Company, when solicited for business, had told witness he could secure lower rates from defendant on lots of two tons or over than were available by complainants' service and lawfully filed rates.

Walter Willhour, defendant, testified that he often hauled shipments before the rate was agreed upon, some of his hauling being done on open account with his customers; that all rates were made as private contracts; that shipments had been refused, specifically a load of horses from Lebec, and at other times when weather conditions rendered shipments liable to injury; that operation was not conducted on any regular schedule; that no terminal was maintained in the city of Los Angeles; that some trips between Bakersfield and Los Angeles had been made via Lancaster and Mojave; and that hauling had been done to practically all cities in the San Joaquin Valley, sometimes to San Francisco. Witness personally made practically all rates, which in some instances were lower and in others higher than those of authorized carriers. Operation has been conducted since June, 1925, under the fictitious name of Willhour Trucking Company.

We have carefully considered the evidence herein, particularly that of defendant Willhour as to the alleged contracts under which the handling has been performed. It appears that all such contracts were verbal, were made for no specific period of time or for any specific volume or amount of tonnage, and carried no obligation on the part of the shipper to patronize the defendant's service.

The offer of the defendant to the public in the transportation of shipments and his practice in the past is set forth in the portion of his testimony which follows:

Question—

* * *; in the conduct of your business heretofore, Mr. Willhour, have you ever refused to haul anything for any one, with this exception—that the commodity is not of the nature that you thought was liable to be damaged by the elements or the demand came upon you at a time, when by reason of having other work in progress, you would not be able to meet the requirements and demands of the shipper, that rate being satisfactory in every instance?

Answer—

If the quantity offered was not sufficient I would refuse the business, yes sir.

Question—

I am asking you to assume a condition where there is a sufficient volume of business; in other words, that the shipments came in truckload lots, and were not shipments which might be damaged by the elements, when you were not tied up with other hauling; in other words, you have your trucks free to handle this business, have you ever refused anything under conditions of that kind?

Answer—

I don't think I would, working as a general trucker, I am open to work wherever it presents itself.

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Question

In other words for material offered in truckload lots between here and Bakersfield and Taft, if the price was satisfactory; and the commodity was such that you could handle it without any possible damage from the elements or anything of that kind, you would handle all you could get hold of, is that the fact?

Answer—

Yes, sir.

From the record herein we hereby conclude that defendant Walter Willhour has heretofore operated and now is operating a truck line as a common carrier of property, for compensation, over the public highways between fixed termini and over regular routes without first having secured a certificate of public convenience and necessity therefor from this Commission in accordance with the provisions of chapter 213, Statutes of 1917, and effective amendments, and that said defendant should be ordered immediately to cease such operation unless and until a certificate of public convenience and necessity shall have been granted following application therefor.

We further conclude that the record herein shows wilful and continued violation by defendant Walter Willhour of the provisions of chapter 213, Statutes of 1917, and effective amendments and for such reason the prayer of complainants for an order canceling and revoking the certificate of public convenience and necessity heretofore granted to said Walter Willhour by this Commission's Decision No. 14939 on Application No. 10891 should be granted and the order herein will so provide.

ORDER.

A public hearing having been held on the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusion and finding of fact as appearing in the opinion which precedes this order;

It is hereby ordered, that defendant Walter Willhour, operating under the fictitious name and style of Willhour trucking Company, be and he is hereby directed to immediately cease the operation of an automobile trucking service as a common carrier of property, for compensation, over the public highway between the fixed termini of Los Angeles and Los Angeles harbor on the one hand and Bakersfield and Taft on the other hand, over the regular routes known as the Ridge route and via Lancaster and Mojave.

It is hereby further ordered, that the operative right heretofore granted to Walter Willhour by this Commission's Decision No. 14939 on Application No. 10891, as decided May 15, 1925, for the transportation of cotton, cottonseed, cotton products and cotton gin supplies between Bakersfield, Weed Patch, Arvin, Lamont, Magunden, Shafter, Wasco, McFarland, Delano, Corcoran, Fresno, Porterville, Mendota,

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Firebaugh, Madera and Merced, and Los Angeles and Los Angeles harbor, and between Corcoran and Fresno or Bakersfield over the route via main traveled roads to and from the state highway between Merced and Los Angeles, thence Los Angeles and Los Angeles harbor, be and the same hereby is revoked and annulled.

It is hereby further ordered, that the secretary of this Commission be and he hereby is directed to forward a certified copy of this order to the Board of Public Utilities and Transportation of the city of Los Angeles and to the district attorneys of the counties of Kern and Los Angeles.

The effective date of this order is hereby fixed as twenty days from the date hereof.

Dated at San Francisco, California, this twenty-first day of March, 1928.

DECISION No. 19515.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF CALIFORNIA, ON RELATION OF THE CALIFORNIA HIGHWAY COMMISSION, FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A STATE HIGHWAY CROSSING UNDER THE TRACKS OF THE SOUTHERN PACIFIC RAILROAD AT A POINT NEAR TRUCKEE, NEVADA COUNTY, CALIFORNIA; THE CONSTRUCTION OF AN OVERHEAD CROSSING OVER THE TRACKS OF THE SOUTHERN PACIFIC RAILROAD AT A POINT ABOUT FIVE MILES NORTH OF TAHOE CITY, PLACER COUNTY, CALIFORNIA; THE CONSTRUCTION OF A GRADE CROSSING AT TAHOE CITY, PLACER COUNTY, CALIFORNIA; AND THE ABANDONMENT OF NINE EXISTING GRADE CROSSINGS OF THE PRESENT ROAD OVER THE TRACKS OF THE SOUTHERN PACIFIC COMPANY BETWEEN TRUCKEE AND TAHOE CITY, CALIFORNIA.

Application No. 13752.

Decided March 22, 1928.

CROSSINGS—California Highway Commission authorized to construct state highway between Truckee and Tahoe City at grade across Tahoe branch of Southern Pacific Company at Tahoe City, under main line track near Truckee, and over Tahoe branch at separated grades near Tahoe City. Crossing costs apportioned.

CROSSINGS—DIVISION OF COSTS—GRADE SEPARATION.—Where the amount of traffic using a crossing will be greatly reduced by the construction of a subway although it is impossible to close the existing road and crossing, the highway should, if constructed, be considered as a new road and the cost of effecting the grade separation apportioned accordingly.

CROSSINGS—DIVISION OF COSTS—GRADE SEPARATIONS.—When the installation of a new subway would reduce to a negligible amount the volume of traffic using an existing subway under main line tracks, as well as travel over present grade crossings on a branch line, thirty per cent of the cost of the subway was assessed to the carrier.

CROSSINGS—DIVISION OF COSTS—JURISDICTION OF COMMISSION.—It appearing that while applicant was the California Highway Commission, a road was actually being constructed by the federal government, it was contended that since

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section 43 (*b*) of the Public Utilities Act does not specifically include the federal government as one of the parties to whom the Commission can apportion the cost of grade separations the Commission is without authority to apportion the cost between the federal government and the railroad, and that no portion of said cost could be assessed to the carrier. *Held*, that merely because all or some portion of the amount assessed to applicant was to be borne by the federal government, the carrier is not in any way relieved from paying its just proportion of the cost.

Harry A. Encell, for Applicant.
H. W. Hobbs, for Southern Pacific Company.

BY THE COMMISSION.

OPINION.

This is an application by the California Highway Commission for an order authorizing and apportioning the cost of constructing various crossings, both at grade and at separated grades, with the tracks of Southern Pacific Company, made necessary by the relocation and reconstruction of a public highway between Truckee and Tahoe City in Placer and Nevada counties, and the abandonment of nine crossings with the said tracks and the existing road between these points.

Public hearings were held in this matter at San Francisco on September 26 and October 17, 1927, before Examiner Gannon.

The record shows that during the summer months there is a heavy vehicular travel in and out of the Tahoe Lake region and a considerable portion moves over the highway involved in this proceeding. The old road from Truckee to Lake Tahoe branched from the main Sacramento-Reno highway near the westerly edge of the town of Truckee, passed through a subway under the Southern Pacific main line track and thence followed, in a general way, the Tahoe branch of the railroad and the Truckee River to Tahoe City, crossing and recrossing the tracks nine times. The new highway, which is already partially graded, is to leave the Sacramento-Reno highway at a point about one mile west of Truckee and pass through a proposed subway under the Southern Pacific Company's main line tracks in the vicinity of Donner Creek and then proceed on the westerly side of the branch line track and the river to a point about five miles north of Tahoe City, where it will cross, on an elevated structure, both the railroad and the river and proceed on into Tahoe City on the east bank of the river. In the immediate vicinity of Tahoe, it will cross at grade several freight leads and spur tracks. The crossings involved in the present application are all of the crossings mentioned as on the new highway alignment above described. They will be discussed in this opinion in the order mentioned.

The subway at Truckee, which is at present used by highway traffic going to and from the lake, is a combination timber and masonry underpass, through the embankment carrying the main line tracks of Southern Pacific Company, at a point immediately west of the west

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switch of Truckee yard. The width of this opening is but 10½ feet and the overhead clearance is also 10½ feet, neither dimension being consistent with the standards of this Commission in respect to subways. The approaches are poor, the southerly approach being on an exceedingly sharp curve, and the sight distance is very short. The short sight distance, combined with the fact that the narrow roadway will not permit two vehicles to meet in the subway, offers a serious hazard to vehicular traffic. This structure is entirely inadequate to meet the traffic needs of this Truckee-Tahoe highway. Only two other plans to carry this highway across the Southern Pacific track have been suggested. The plan proposed by applicant provides for a 24-foot arch through the railroad embankment at the place where the track crosses the Donner Creek ravine, about one mile west of the existing subway. This underpass would have ascending grades of approach of 1.84 per cent from the north and 3.12 per cent from the south and is estimated to cost approximately $69,300. The Southern Pacific Company proposes a subway under its tracks at a point about 400 feet west of the existing subway. This structure, which would consist of concrete abutments and wing walls with a deck supported by steel "I" beams, would provide a 25-foot clear roadway and is estimated to cost approximately $26,200 exclusive of approaches. Applicant contends that the alignment of the road necessary to utilize such a subway would not provide proper sight distance and that in order to connect with the ultimate location of the Sacramento-Reno highway, as proposed through the town of Truckee, prohibitive grades of approach would be required.

If the plan proposed by applicant is carried out, it will still be necessary to maintain a crossing of some sort in the vicinity of the existing subway, in order to give the public access to the area lying between the main line tracks and the Truckee River. The amount of traffic using this crossing will, however, be greatly reduced. Considering, therefore, that it is apparently impossible to close the existing road and crossing if the subway at Donner Creek is constructed, it is believed that the connection proposed by the highway should, if constructed, be considered as a new road and the cost of effecting the grade separation at Donner Creek apportioned accordingly.

The Commission has, in previous decisions, set forth its views in regard to the obligation of railroad companies to provide safe and adequate means for the public crossing its tracks and in several instances has assessed the company a substantial portion of the cost of effecting grade separations between existing tracks and new roads. In the present instance, the installation of a new subway at Donner Creek would undoubtedly reduce, to a negligible amount, the volume of traffic using the existing subway under the main line tracks, as well

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as the travel over the present grade crossings on the Tahoe branch of the Southern Pacific Company between Truckee and Donner Creek, and we believe that under these conditions, the Southern Pacific Company should bear 30 per cent of the cost of the subway proposed by applicant at Donner Creek.

Between Donner Creek and the proposed overhead crossing north of Tahoe City, the old road crosses the railroad track five times, whereas the new highway will eliminate any necessity for the through highway traffic crossing the track at grade at these points, although the crossings, or at least some of them, will probably have to remain in place for the convenience of persons having summer camps or cottages along the Truckee River. Because of the topography of the surrounding country, however, there is little possibility that any of these crossings will ever again become important or carry any but purely local traffic. In effect they will be little more than private crossings giving access to camps and cottages on the far side of the railroad from the highway.

One of these crossings is located about three-quarters of a mile north of the proposed overhead crossing and at this crossing the road, after crossing the tracks, also crosses the Truckee River and from this point remains on the east bank of the river. The proposed overhead crossing accomplishes the same result, in that it carries the highway across the railroad and the river, but at a location more suitable for a grade separation.

The applicant has presented an estimate giving the cost of reconstructing a road between two given points, crossing the river on a low level bridge in the vicinity of the existing bridge and crossing the railroad track at grade. The cost of this road, including the bridge, is estimated to be $23,991. An estimate is also presented, showing the cost of constructing a road between the same two given points but staying on the west bank of the river until a point suitable for a grade separating structure is reached and then crossing both the railroad and river on a single bridge. The cost of such a road is estimated to be $63,773.

The difference between these two sums represents the estimated excess cost that would be incurred for the sole purpose of effecting a grade separation. If this were a case involving a railroad over which there were frequent train movements, the Commission would give serious consideration to dividing this excess expense equally between applicant and the railroad.

Subsequent to the submission of this case, the Commission, by Decision No. 19169, dated December 23, 1927, in Application No. 14215, authorized Southern Pacific Company to discontinue the operation of local trains over this line during the summer season and public trans-

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portation will be provided through the operation of motor busses. As a result, the company will probably operate but two trains per day over this line.

In view of this situation, we do not believe that the benefits that will accrue to the railroad by providing for the elimination of this grade crossing will justify a greater expense, assessed to the railroad, than $10,000. After giving consideration, however, to the fact that the general plan provides for the elimination of practically all traffic from other grade crossings on this same branch line railroad, we believe that, considered as a whole, $10,000 is a fair and equitable amount to assess to Southern Pacific Company for their portion of the improvement.

In the vicinity of Tahoe City, the present road into town crosses a freight track and again recrosses this track at a point some 900 feet easterly of the first crossing. In the proposed plan, it is the intention to reconstruct the highway leading to Tahoe City entirely on the northerly side of this freight lead, thus avoiding crossings of this road with the main track. By so doing, however, it becomes necessary to cross two spur tracks and it will also be necessary that each branch of the highway wye, connecting with the road leading to resorts on the west side of the lake and to Placerville, cross the main freight lead. In effect, therefore, the proposed relocation will cause to be abandoned, as main highway crossings, one spur track crossing and one crossing of the main freight lead and will create two spur track crossings and two crossings of the highway wye over the main track.

It therefore appears reasonable to authorize the crossings proposed by the Highway Commission, but we believe that the crossings with the main freight lead should be protected by automatic wigwags. We can see no reason for assessing the Southern Pacific Company any portion of the cost of constructing these grade crossings.

It appears from the record in this proceeding that while the applicant is the California Highway Commission, the road actually is being constructed by the federal government. The theory has been advanced that since section 43 (*b*) of the Public Utilities Act does not specifically include the federal government as one of the parties to whom this Commission can apportion the cost of grade separations, the Commission is, in this instance, without authority to apportion the cost between the federal government and the railroad. Southern Pacific, therefore, contends that the Commission can not apportion any of the cost of these crossings to the railroad company. The apportionment of cost, as set forth above, is based on what appears to be a proper division of expense between applicant and Southern Pacific Company and we do not consider that because all or some portion of the amount assessed to applicant is to be borne by the federal government, Southern Pacific

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Company is, in any way, relieved from paying its just proportion of the cost of constructing the grade separations under consideration.

ORDER.

The people of the State of California, on relation of the California Highway Commission, having made application to this Commission for an order authorizing the construction of a public highway crossing under the main line tracks of Southern Pacific Company at a point near Truckee, Nevada County, over the track of said company's Tahoe branch at a point about five miles north of Tahoe City, Placer County, and at grade across certain tracks of said Tahoe branch at Tahoe City, and apportioning the cost thereof, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision;

It is hereby ordered, that:

I. Permission and authority be and it is hereby granted to the people of the State of California, on relation of the California Highway Commission, to construct a public highway under the main line tracks of the Southern Pacific Company in the southerly half of section 16, T. 17 N., R. 16 E., M. D. B. and M., as shown by the map, Exhibit "A," attached to the application. Said crossing shall be identified as Crossing No. A-206.7-B and shall be constructed subject to the following conditions:

(a) Said undergrade crossing shall be constructed substantially in accordance with Exhibit "B," attached to the application.

(b) The cost of construction of said undergrade crossing, except paving the highway, shall be borne 70 per cent by the applicant and 30 per cent by Southern Pacific Company. Applicant shall bear all paving costs. The maintenance of said crossing shall be borne by applicant.

(c) Said undergrade crossing shall be constructed with clearances conforming to the provisions of this Commission's General Order No. 26-C.

II. Permission be and it is hereby granted to the people of the State of California, on relation of the California Highway Commission, to construct a public highway above the track of the Southern Pacific Company's Tahoe branch at a point in the westerly half of section 27, T. 16 N., R. 16 E., M. D. B. and M., as shown by the map, Exhibit "A," attached to the application. Said crossing shall be identified as Crossing No. AM-218-A and shall be constructed subject to the following conditions:

(a) Said overhead crossing shall be constructed substantially in accordance with Exhibit "C," attached to the application.

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(b) Southern Pacific Company shall pay $10,000 toward the cost of constructing said overhead crossing, the remainder of the cost to be borne by applicant.

(c) Said overgrade crossing shall be constructed with clearances conforming to the provisions of this Commission's General Order No. 26-C.

III. Permission and authority be and it is hereby granted to the people of the State of California, on relation of the California Highway Commission, to construct public highways at grade across tracks of Southern Pacific Company's Tahoe Branch at four points in section 7, T. 15 N., R. 17 E., M. D. B. and M., at the locations shown on the map, Exhibit "D," attached to the application, said crossings being more definitely described as follows:

A—A crossing of a spur track at approximately engineers station 17+90 on the highway.

B—A crossing of the westerly leg of the highway wye connecting with the Placerville road over the main freight lead at a point opposite and fifty-five feet, more or less, southerly from engineers station 13+30 on the main highway.

C—A crossing of the easterly leg of the highway wye connecting with the Placerville road over the main freight lead at a point opposite and fifty-five feet, more or less, southerly from Engineers Station 10+00 on the main highway.

D—A crossing of a spur track at approximately engineers station 6+80 on the highway.

The above crossings shall be identified as follows:

Crossing A—No. AM-222.8-C,
Crossing B—No. AM-222.9,
Crossing C—No. AM-223.0,
Crossing D—No. AM-223.1-C.

Said crossings shall be constructed subject to the following conditions and not otherwise:

(a) Said crossings shall be constructed with widths not less than twenty-four feet, with grades of approach not greater than 4 per cent and at angles with the railroad tracks substantially the same as those shown on Exhibit "D" attached to the application. They shall be constructed substantially in accordance with standard No. 2, as specified in General Order No. 72 of this Commission, shall be protected by suitable crossing signs and shall in every way be made proper for the passage thereon of vehicles and other road traffic.

(b) The entire expense of constructing the grade crossings shall be borne by applicant. The cost of maintenance for those portions

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of said crossings up to lines two feet outside of the outside rails shall be borne by applicant. The maintenance of those portions of said crossings between lines two feet outside of outside rails shall be borne by Southern Pacific Company.

(c) An automatic flagman shall be installed for the protection of each of the crossings identified as AM-222.9 and AM-223.0 above. Said automatic flagmen shall be of a type and installed in accordance with plans approved by the Commission. The cost of maintaining said wigwag shall be borne by Southern Pacific Company.

IV. Said crossings are granted subject to further conditions as follows:

(a) Applicant shall, within ninety days from the date hereof, file with the Commission a certified copy of an agreement between the interested parties, relative to the division of cost of maintenance of the said undergrade and overgrade crossings herein authorized. Said agreement shall be subject to the approval of this Commission.

(b) Applicant shall, before commencement of construction, file with this Commission a complete set of the detail plans of the proposed undergrade and overgrade structures.

(c) Applicant shall, within thirty days thereafter, notify this Commission, in writing, of the completion of the installation of said crossings.

(d) If said crossings shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(e) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings, as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twenty-second day of March, 1928.

DECISION No. 19518.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE AND SALE OF CAPITAL STOCK OF THE PAR VALUE OF THREE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS.

Application No. 14121.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER PERMITTING IT TO ISSUE THREE HUNDRED THOUSAND DOLLARS OF EQUIPMENT TRUST CERTIFICATES.

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Application No. 14122.
Decided March 23, 1928.

PROCEDURE.—Submission of application of Pickwick Stages System to issue securities set aside and matters reopened for further hearing.

EVIDENCE—ADMISSIBILITY—BEST EVIDENCE RULE.—An exhibit and letter of transmittal prepared from the books of a parent corporation, setting forth the cost to a subsidiary stage company of certain buses constructed by the parent corporation, but not showing the details of the profit claimed by the parent corporation, will, upon motion, be stricken from the record upon the ground that the books of the parent corporation, and not the exhibit, constitute the best evidence.

Warren E. Libby, for Applicant.
John Francis Neylan, *Grove J. Fink* and *John D. Costello*, by *Grove J. Fink*, Interested Parties.

SEAVEY, *Commissioner*.

OPINION AND ORDER SETTING ASIDE SUBMISSION AND REOPENING MATTERS FOR FURTHER HEARING.

By and under Decision No. 19105, dated December 6, 1927, as amended by Decision No. 19142, the Commission authorized Pickwick Stages System, among other things, to issue and sell at not less than par $325,000 of its common capital stock, and to execute and enter into an equipment trust agreement and a lease agreement, and to assume and guarantee the payment of not less than $300,000 of 6½ per cent serial equipment trust certificates, the issue and sale of which certificates was authorized at not less than 95 per cent face value. The order contains a proviso that the proceeds of the sale of stock and certificates be deposited in a specific bank account, to be used by the company for the purpose of financing the construction cost of equipment, but only upon being authorized so to do by supplemental orders of the Commission. In this connection condition No. 1 of the order reads:

> To obtain supplemental orders authorizing the use of proceeds from the sale of the stock and certificates applicant shall first file with the Commission supplemental petitions containing certified statements showing in detail the actual cost of constructing the equipment to be financed through the use of said proceeds, and justify said cost.

On December 14, 1927, applicant filed a supplemental petition, asking permission to use $66,500 of the proceeds from the sale of the stock and certificates to finance in part the cost of four 27-passenger stages of the alleged value of $13,500, and one 26-passenger parlor stage of the alleged value of $12,500. This equipment proposed to be purchased was constructed by the Pickwick Corporation, the company which owns or controls all of the outstanding stock of the applicant, Pickwick Stages System. The prices proposed to be paid for the stages are approximately 15 per cent higher than the actual costs reported in the supplemental application. The actual cost of the construction for

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five coaches totals $57,589.69, covering plant, labor and material costs. The difference between this figure and the $66,500 represents the amount which the Pickwick Corporation would receive if applicant's request were granted.

In ex parte Decision No. 19232, dated January 10, 1928, the Commission authorized the use of only $57,589.69, and in that opinion stated:

> * * * Further condition "1," of the order in Decision No. 19105, quoted above, provides that before the company can obtain supplemental orders permitting the withdrawal of stock and certificate proceeds to finance the cost of equipment, it shall, among other things, justify said cost and we do not believe that sufficient showing has been made in this supplemental petition in justification of the use of the entire $66,500.

A petition for rehearing of the above two mentioned decisions, No. 19105, as amended, and No. 19232, was filed by the Pickwick Stages System, alleging, in the main, that the Commission erred in not allowing the full $66,500, and requesting, in some respects, modification of the conditions contained in Decision No. 19105, as amended. A rehearing was had before me in San Francisco, the matters were duly submitted, and are now ready for decision.

At the hearing applicant, among other things, introduced in evidence an exhibit, which was filed with the supplemental application, setting forth the cost to applicant of the buses in question, but not showing the details of the 15 per cent profit claimed by the Pickwick Corporation. It was established that this exhibit was prepared from the books of the Pickwick Corporation and objection was made to its introduction upon the ground that these books, and not the exhibit, constituted the best evidence. A like objection was made to the introduction of a letter of transmittal forwarded to this Commission with the said supplemental application and exhibit. The exhibit and letter were allowed in evidence subject to these objections. Applicant attempted to justify the figure of $66,500 by stating that the exhibit and letter were sufficient in this regard, and then submitted the matter.

Upon the grounds specified in this objection a motion was thereupon made to strike the exhibits and letter from evidence unless the books of the Pickwick Corporation were made accessible to the staff of the Commission for purposes of inspection and check. In reply to this motion, applicant stated that the Commission was not entitled to an examination of the books for the purpose of obtaining underlying data, and in response to a specific request, refused to produce these books for examination. This motion was taken under advisement, whereupon the matter was submitted by all parties.

While it is my opinion that this motion was well taken and should be granted, nevertheless it has now become unnecessary to make a specific ruling for the reason that since the submission of these matters the Commission has received from the applicant a communication offering

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to open the books of the Pickwick Corporation so that an inspection and check could be made to determine the reasonableness of the cost of the above mentioned busses.

Since applicant has thus changed its position, it seems advisable that the submission heretofore made be set aside and that both matters be reopened for further hearing, and I recommend accordingly.

ORDER.

Good cause appearing;

It is hereby ordered, that the submission heretofore made in these two matters on rehearing be and the same is hereby set aside.

It is hereby further ordered, that the applications as above numbered and entitled be and the same are hereby reopened for further hearing; and

It is hereby further ordered, that the said hearing be had before Commissioner Seavey on Wednesday, the eleventh day of April, 1928, at 10 a.m. in the courtroom of the Commission, 520 State Building, San Francisco, California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-third day of March, 1928.

DECISION No. 19521.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES RAILWAY CORPORATION, A CORPORATION, FOR AN ORDER READJUSTING RATES AND ESTABLISHING JUST AND REASONABLE RATES FOR THE TRANSPORTATION OF PERSONS ON THE COMPANY'S LINES IN THE STATE OF CALIFORNIA.

Application No. 13323.

Decided March 26, 1928.

RATES—STREET RAILWAY—INCREASE.—Application of Los Angeles Railway Corporation to increase rates, denied.

VALUATION—ASCERTAINMENT OF—IN GENERAL.—Determination of fair value for rate making purposes calls for the exercise of judgment and all factors having a bearing upon the property involved will be considered, and such weight given to each as seems proper under the evidence of record.

VALUATION—NONPHYSICAL ELEMENTS—HIGH PRICES.—Allowance was made in a rate valuation for the fact that certain property was acquired or constructed during a period of high prices.

RETURN—REASONABLENESS—FACTORS CONSIDERED—EFFICIENCY OF MANAGEMENT. When operating methods of a street railway might be so changed as to result in large reductions in the cost of operation and still enable the rendering of efficient and adequate service, and the company has made no effort to take advantage of these economies which would result in receiving a full and adequate return, an increase in rates will not be authorized.

VALUATION—IN GENERAL—*per* CARR *concurring.*—The fact that a street railway is engaged in active and acute competition with privately owned automobiles bears upon and affects the value of its property for rate fixing purposes.

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RETURN—REASONABLENESS—SEPARATE DEPARTMENTS OF UTILITY—*per* CARR *concurring.*—While operation of motor busses by a street railway has resulted in an out-of-pocket loss, if, with more experience in this line of business these losses can not be reduced, the rates for motor bus service should be increased rather than burdening the rail lines with an unprofitable operation.

RATES—CONTRACTS AND FRANCHISES—*per* CARR *concurring.*—While five-cent fare franchise provisions are subject to change by the state in the exercise of its police power, agreements of this character should not be brushed aside or ignored in the absence of clear and convincing evidence that adherence to them will work grave injustice to the carrier.

RETURN—REASONABLENESS—AVERAGE RETURN—*per* CARR *concurring.*—While a utility may not secure each year a uniform return, say, of seven per cent, if the processes of regulation are so shaped that a utility on the average, under normal conditions and with proper operating economy and efficiency, earns a reasonable return on the fair value of its property, the utility has no cause for complaint.

S. M. Haskins and *Paul R. Watkins* of *Gibson, Dunn and Crutcher*, for the Applicant.

Jess. E. Stephens, City Attorney; *Milton Bryan*, Deputy City Attorney, and *J. L. Ronnow*, Deputy City Attorney, for the City of Los Angeles.

George A. Damon, for City Planning Association.

Carl Bush and *E. F. Bogardis*, for Hollywood Chamber of Commerce.

W. H. Engel, in propria persona.

Clyde Woodworth, City Attorney, for the City of Inglewood and City of Hawthorne.

LOUTTIT, *Commissioner.*

OPINION.

The Los Angeles Railway Corporation, a street railway operating in and about the city of Los Angeles, filed with this Commission, on November 17, 1926, an application whereby permission is sought to increase the rates of fare charged upon its street railway, as set forth in the schedule marked Statement "I," attached to the application, as modified by supplemental schedules submitted in evidence.

In general, permission is asked to increase the present basic fare of 5 cents to 7 cents with the sale of four single fare tokens for 25 cents. No request was made to increase the present 10-cent bus fare.

Hearings on this matter were held in Los Angeles during 1927, on January 13th, May 17th, 18th and 28th, and on August 9th, 10th and 11th. At the hearing held on August 11th the matter was taken under submission.

A number of very detailed and thorough studies, covering elements of value, financial results from operation and rates, were prepared and presented in evidence by witnesses representing the city of Los Angeles, applicant, and the engineering department of this Commission, respectively.

The evidence presented has been given careful consideration. The determination of fair value for rate-making purposes calls for the exercise of judgment and, in reaching the conclusion hereinafter stated, all factors having a bearing upon the value of the property involved have been considered and such weight has been given to each as seems proper under the evidence of record. Forty-two million dollars is

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the highest figure that may reasonably be accepted as a rate base. This figure covers fully the undepreciated cost of the company's property with land at present-day values. A considerable portion of the company's property was acquired or constructed during the period of high prices and allowance is made for such cost. It includes property constructed by funds set aside in the depreciation reserve. Furthermore, there must be taken into consideration the unsatisfactory franchise condition of the company discussed in *In re Los Angeles Railway Corporation* (19 C. R. C. 980), as to which there is no evidence of any improvement. These facts make the acceptance of any higher estimate of a rate base, than that herein adopted, unjustified. The figure of $42,000,000 includes an allowance for materials and supplies of approximately $750,000 and for work in progress of approximately $250,000.

A careful consideration of all the evidence justifies the following findings of fact:

1. That a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this company is the sum of $42,000,000.

2. That the financial results from the operation of applicant's property, under present operating methods, for the year 1927, based upon estimates contained in the record, may be fairly stated as follows:

Total operating revenues	$13,254,000 00
Total operating expense, including depreciation, computed on a 5 per cent sinking fund basis, and taxes	11,183,739 00
Net income available for return	$2,070,261 00

3. That the average annual rate of return earned by applicant for the five-year period ending December 31, 1926, has been approximately 7.1 per cent.

4. That the rate of return earned by applicant under existing fares and methods of operation for the year ending December 31, 1927, was approximately 4.9 per cent.

5. The record shows that the operating methods of the company might be so changed as to result in large reductions in the cost of operation and still enable the company to render efficient and adequate service. The management of the company has made no effort to take advantage of these possible economies which, if made effective, would result in the company receiving a full and adequate return on the rate base heretofore named, to wit, the sum of $42,000,000. By reason of these facts, the rates of fare now charged by said company are not unreasonable.

6. That the schedule of fares applied for by applicant, to wit, a 7 cent cash fare with four single fare tokens for 25 cents, may be

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reasonably expected to produce a gross revenue of approximately $15,708,000, and will, if permitted, produce a net annual return of 9.4 per cent upon the above rate base, and the rates applied for, therefore, if put into effect, would be unjust and unreasonable.

Based upon these findings of fact, the following form of order is recommended:

ORDER.

The Los Angeles Railway Corporation having filed the above entitled application for an adjustment of its rates, public hearings having been held, and the matter having been submitted to the Commission for its consideration and the Commission having fully considered the premises:

It is hereby ordered, that the application of the Los Angeles Railway Corporation for increase of its rates of fare in the above entitled proceeding be and the same hereby is denied.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-sixth day of March, 1928.

LEON O. WHITSELL,
EZRA W. DECOTO,
THOS. S. LOUTTIT,
Commissioners.

I concur in the order and in most of what is said in the opinion which precedes it. There are, however, some things not expressed in the opinion to which reference may well be made and some conclusions which justify further comment.

While I am in accord with what is found as to rate base, there is one consideration not mentioned in the opinion, and which I think should be alluded to, which weighs heavily against acceptance of some of the higher figures claimed by the applicant and lends strong support to the figure found as reasonable. This is that the company is now, and for many years has been, engaged in active and acute competition with privately owned automobiles. That this fact bears upon and affects the value of its property seems to me so obvious as to require no discussion. Various other reasons could well be advanced to sustain the conclusion respecting value, which finds unusually convincing support in the record.

This is the second time this company has sought from the Commission authority to depart from the basic 5-cent fare which, with inconse-

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quential exceptions, has prevailed on its Los Angeles system for many years, and to enter upon the uncharted sea of multi-coin fares.[1]

In November, 1918, the company came before the Commission with a request that its service and financial conditions be investigated. This finally resulted, on May 31, 1921, in an order permitting the company to charge a 6-cent fare, with 10 tokens or tickets for 50 cents. (*Re Los Angeles Railway Corporation*, 19 C. R. C. 980.) In that decision it was pointed out that an investigation by the Commission had been made as to the methods of operation of the applicant and that pursuant to recommendations made by the Commission's engineers various improvements in service had been put into effect, resulting in large economies in operation, but that while the estimate of savings in operating expenses proved to be approximately correct, "unexpected increases in power costs and the further wage increases incurred, amounting to approximately $1,250,000 per year, practically absorbed the benefits of operating savings and a part of the net earnings from increased traffic." (19 C. R. C. 998.)

In the course of its opinion the Commission said:

> **If adequate street railway service is to be given in Los Angeles, there appears to be no possibility for the company to secure the necessary revenue under a continuation of the flat 5-cent fare. An increase in the fare in some form, we are satisfied, should be authorized if street railway service is not to suffer and great injury is not to result to the development of the city.**

The company did not accept the increased fares authorized by this decision and after a period of over five years and on October 25, 1926, at the instance of the company, the Commission set aside and revoked its decision.

Notwithstanding this confident prediction the company, during the seven-year period from 1921 to 1927, inclusive, did, under the basic 5-cent fare, and although burdened by its bus operations to which reference will be made, realize net earnings which produced an average return upon all of its property, valued on the basis herein found to be reasonable, of 6.6 per cent. This return was not uniform over the

[1] Mr. Mott, chief engineer of the Commission, spent about six weeks in other sections of the country studying street railway conditions. Testifying here, after pointing out the confusion flowing from multi-coin fares and basing his testimony upon his extensive study and investigation, he added:

"Another feature that has impressed itself on me is that in most cities that have departed from the single coin fare of 5 cents, subsequent revenues have continuously diminished to such a degree that results of operation ultimately have often been nearly as unsatisfactory on the higher fares as they were on the 5-cent fare. It may be that there is no logical stopping point between the 5-cent fare and the 10-cent fare."

Later in his testimony, after referring to the experience of the Key System Transit Company in securing a much smaller increase in revenue than expected from an increase in fare from 6 cents to 7 cents, he stated:

"With that situation in mind, together with the fact that in most of the eastern cities where they have these multiple coin fares, I find the sad tale from a financial point of view that the operators have to tell is—was comparable to the Key Route tale and so much worse than the situation on the two large 5-cent fare cities here in California that I could not help but come to the conclusion that there must be some inherent merit in the basic 5-cent fare."

This testimony throws grave doubt upon the permanency of any increase in revenue due to horizontal increases in fare and as to the beneficial effect of any such increase upon the financial status of a street railway company.

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period, it having been subject to somewhat striking fluctuations from year to year, as more fully appears from the following table, which shows the return not only for the seven-year period but for the period from 1913 to date.

Return by Years.

Year	Approximate value on basis of value found for 1927	Net income adjusted for 5 per cent sinking fund depreciation	Per cent return
1913	$22,700,000 00*	$1,830,000 00	8.1
1914	23,700,000 00	1,680,000 00	7.1
1915	24,500,000 00	1,290,000 00	5.3
1916	25,200,000 00	1,280,000 00	5.1
1917	25,500,000 00	1,190,000 00	4.7
1918	25,800,000 00	730,000 00	2.8
1919	26,100,000 00	860,000 00	3.3
1920	27,000,000 00	1,600,000 00	5.9
1921	28,500,000 00	1,770,000 00	6.2
1922	31,400,000 00	3,040,000 00	9.7
1923	34,800,000 00	3,280,000 00	9.4
1924	38,800,000 00	2,880,000 00	7.4
1925	39,900,000 00	2,090,000 00	5.2
1926	41,200,000 00	1,910,000 00	4.6
1927*	42,000,000 00	2,070,000 00*	4.9
Average for 15-year period			6.0
Average for last seven years			6.6

* 1927 operations are in part based upon estimates.

It should be pointed out that the savings in operating expenses of something like $1,000,000 a year, adverted to by the Commission in its 1921 decision, which were effected, according to the decision, largely in the year 1920, were savings which in large part could have been effected in the years preceding. If this circumstance is taken into account it is apparent that over the fifteen-year period a 5-cent fare was sufficient to yield the company a return substantially more than the average of 6.0 per cent indicated in the table.

The experience of the company over this fifteen-year period, during which there occurred violent changes in conditions, particularly as to operating costs, as well as the error into which the Commission was led in its 1921 decision, emphasizes the danger of attempting to arrive at a satisfactory conclusion as to rates upon the experience of a period as short as one or two years.

Thus it would have been just as reasonable in 1923 to have reduced the fares of the company, because in that and the preceding year it was earning a return of between 9 and 10 per cent on its property, as it would be now to increase its rates because it is earning a return of only approximately 5 per cent.

Not only can it not be said, with any confidence of realization, that the present rates will not in the future on the average and under normal conditions yield this company a reasonable return upon the property used in the public service, but a far more logical deduction from the company's experience is that the existing rates will be adequate to this end. From the table showing earnings it will be observed that

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good and bad years for the company occur in rather short cycles. The years 1913 and 1914 and then 1922 and 1923 were very good years. The years 1918 and then 1926 were bad years. Other years were slightly above or below the average. The company's worst year in the last cycle occurred in 1926. The year 1927 shows signs of improvement. There is no convincing evidence that the present low cycle of earnings is permanent or that in the future the company will not realize as good or a better return on the average than it has during the last seven years.

One condition brought out by the record of the hearings calls for brief reference. Within the last few years the company has entered upon the motor bus business.[2] This venture thus far has not proved a successful one but, on the contrary, has resulted in an out-of-pocket loss to the company. As time goes on and the company becomes more experienced in this line of business it should be able to reduce these losses and possibly make its motor buses which are operating on a 10-cent fare care for themselves without burdening the rail lines. If not, the rates for this motor bus service should be increased rather than burden the rail lines with such an unprofitable operation. In this connection it should be pointed out that the table of earnings heretofore set out indicates the return on both rail and bus operations. The return on rail operations alone was appreciably higher than on the consolidated business.[3]

In considering the reasonableness of the present rate structure of the applicant it must be borne in mind that the value of money invested in utility enterprises is now the lowest it has been in years. Even the most cursory examination of the reported decisions and orders of this Commission shows that capital is flowing readily to sound and needed utilities serving growing communities on an earning basis to

[2] These operations really fall within two classes. Some bus service represents merely extensions of strictly rail operations and should be and here are considered as a part of the rail operations. As to these bus lines the rail fares prevail. The other class of bus operations partake more of the nature of independent lines and are operated on a 10-cent fare basis. It is this latter class which is here referred to.

Return by Years on Rail Operations.

Year	Approximate value rail property on basis found for 1927	Net income on rails, 5 per cent sinking fund for depreciation	Per cent return on rails
1921	$28,500,000 00	$1,770,000 00	6.2
1922	31,400,000 00	3,040,000 00	9.7
1923	34,230,000 00	3,313,000 00	9.7
1924	37,840,000 00	2,952,000 00	7.8
1925	38,610,000 00	2,187,000 00	5.7
1926	39,420,000 00	2,064,000 00	5.2
1927	40,110,000 00	2,206,000 00	5.5
Average for period			7.0

This table eliminates all bus operations both on the 10-cent fare basis and on a 5-cent fare basis. In drawing conclusions from this table some allowance must be made for the fact that extension bus lines should be included in the rail operations, which inclusion would reduce slightly the average return shown.

[3] Elimination of bus operation shows an average return to the company on its rail operations alone during the period 1921-1927, inclusive, of approximately 7 per cent, as more fully apears from the following table, in which has been eliminated the investment in bus property as well as receipts and expenses of bus operations:

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the investor of from 6 per cent to 6½ per cent on preferred stocks, while for bonds the range is from 5 per cent, and even less, to 5¾ per cent.[4]

This company occupies the streets under franchises, most of which call for a 5-cent fare. While such fare provisions are subject to change by the state in its exercise of its police power,[5] agreements of this character should not be brushed aside or ignored in the absence of clear and convincing evidence that adherence to them will work grave injustice to the company. Particularly is this so in view of the many peculiar advantages of the basic 5-cent street car fare as contrasted with serious objections both in respect to service and financial results that seem to be attendant upon a multi-coin fare structure.

It is to be regretted that here the applicant does not secure each year a uniform return say of 7 per cent, but it does not seem possible to authorize rate changes up or down with such frequency as to bring about such a result. Such frequent changes, even if practicable, would be bound to have injurious consequences to the utility and to the community it serves. After all, if the processes of regulation are so shaped that a utility, on the average and under normal conditions and with proper operating economy and efficiency, earns a reasonable return on the fair value of its property the utility has no cause for complaint.

As it is not established here by clear and convincing evidence nor by a fair preponderance of the evidence and it can not be found that the present fares will not, in the future, measure up to this test, it results that the present application should be denied.

W. J. CARR,
Commissioner.

I concur in the opinion and order and in the concurring opinion of Commissioner Carr. There is one matter, that of economies of operations, which, although referred to in the main opinion, to my mind demands more specific attention. Substantial affirmative testimony is

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[4] *Re The California Oregon Power Company*, Decision 18962, dated October 25, 1927, Application 14113.
Re Coast Counties Gas and Electric Company, Decision 19121, dated December 15, 1927, Application 14209.
Re Pacific Gas and Electric Company, Decision 18815, dated September 19, 1927, Application 14072, and Decision 19304, February 3, 1928, Application 14387.
Re Pacific Water Company, Decision 18612, dated July 19, 1927, Application 13799.
Re Southern California Edison Co., Decision 18787, dated September 13, 1927, Application 14044.
Re Southern California Edison Co., Decision 18082, dated March 19, 1927, Application 13602 (29 C. R. C. 463).
Re Southern California Edison Co., Decision 18607, dated July 13, 1927, Application 13907, and Decision 19052, dated November 21, 1927, Application 14187.
Re Southern California Gas Co., Decision 18008, dated February 16, 1927, Application 13496 (29 C. R. C. 386).
Re Southern California Gas Co., Decision 18918, dated October 10, 1927, Application 13898.
Re Southern Counties Gas Company of California, Decision 19301, dated January 31, 1928, Application 14358.
Re Spring Valley Water Co., Decision 19126, dated December 19, 1927, Application 14204.

[5] This broad statement may be subject to some exceptions due to the 1915 amendment to the Broughton Act (Statutes 1915, page 1300).

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found in this record to the effect that changes in operative methods could be made which would save several hundred thousand dollars in expense without interfering with the adequacy, efficiency and safety of operations. The methods proposed are such as have been used successfully in other cities in this state and in cities of other states. For some reason this company determined to oppose the recommendations. It introduced some rather indifferent testimony, through its own experts, in rebuttal. Realizing, probably, the weakness of its position in the record the company then proceeded by public and private means, directly and indirectly, to bring about conditions which would influence this Commission to grant its request for increased rates. Under the circumstances, as evidenced by this record, if the Commission were to grant any increase there would fall upon those who are forced to use this street railway an unwarranted and unjust burden.

C. L. SEAVEY,
Commissioner.

DECISION No. 19523.

IN THE MATTER OF THE APPLICATION OF ED FLETCHER, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SHERMAN WATER COMPANY, OPERATING AS A PUBLIC UTILITY; TITLE INSURANCE AND TRUST COMPANY, A CALIFORNIA CORPORATION, AS TRUSTEE, AND CITY OF BEVERLY HILLS, A MUNICIPAL CORPORATION OF THE SIXTH CLASS, FOR PERMISSION TO CARRY OUT THE TERMS OF AN OPTION HERETOFORE APPROVED BY THE COMMISSION IN ITS ORDER AND OPINION No. 13659.

Application No. 14495.
Decided March 27, 1928.

TRANSFER—WATER UTILITY.—Ed Fletcher (Sherman Water Company) authorized to transfer water system serving Sherman and vicinity to city of Beverly Hills.

BY THE COMMISSION.

OPINION AND ORDER.

Ed Fletcher, doing business under the firm name and style of Sherman Water Company, operates a public utility water system in and in the vicinity of the town of Sherman in Los Angeles County, as more particularly described in the application herein. All of the lands and water rights, easements and rights of way described in said application are now owned by Title Insurance and Trust Company, as trustee, subject to the contract between James K. Diebold and the Sherman Water Company, and also subject to an option entered into in accordance with the authorization hitherto granted by Decision No. 18414, in Application No. 13659.

Applicants now seek authorization to carry out the terms of said option agreement with two exceptions: first, that the price specified

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therein be changed to the sum of $350,000; second, that paragraph eighth of the option (Exhibit "B") be changed so that the obligation of the city of Beverly Hills to fulfill public service obligations of the Sherman Water Company shall be limited by substituting for the property described under paragraph eighth the property described in paragraph third of the application, these changes to be accomplished by the execution of an agreement marked "Exhibit E." It is proposed that these transactions shall be carried out through an escrow, being Escrow No. 313,788, Trust Department, with Title Insurance and Trust Company.

Full consideration having been given to the above application, the Commission being of the opinion that this is a matter in which a public hearing is not necessary, and that said application should be granted;

It is hereby ordered:

(1) That Title Insurance and Trust Company be and it is hereby authorized to execute a grant deed to the city of Beverly Hills, granting and conveying all of the water, water rights, pumping rights, real property, easements, rights of way, and other rights agreed to be sold by James K. Diebold under the option agreement attached to the application and marked "Exhibit B," which is hereby referred to and made a part of this order by reference.

(2) That Title Insurance and Trust Company and Sherman Water Company be and they are hereby authorized to execute and deliver to the city of Beverly Hills bills of sale to all of the personal property agreed to be sold under said option marked "Exhibit B."

(3) That Sherman Water Company, city of Beverly Hills and Title Insurance and Trust Company be and they are hereby authorized to execute and deliver through escrow an agreement substantially in accordance with the terms and provisions of the agreement attached as "Exhibit E" to the application herein, and which is hereby referred to and made a part of this order by reference; provided, that such authorization is conditioned upon the assumption by said city of Beverly Hills of all public utility obligations, duties and liabilites of said Sherman Water Company.

(4) That Sherman Water Company be and it is hereby authorized to execute and deliver to the city of Beverly Hills an assignment of that certain franchise known as Ordinance No. 369.

(5) That Sherman Water Company be and it is hereby authorized to deliver to the city of Beverly Hills deeds to the tank sites forming a part of said distribution system.

It is hereby further ordered, that the authorization herein granted is subject to the following conditions:

(a) The transfer herein granted shall apply only to such transfer as shall have been completed on or before the thirty-first day of May,

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1928, and a certified copy of the final instruments of conveyance shall be filed with this Commission by said Sherman Water Company within thirty days from the dates upon which said instruments are executed.

(b) Within ten days from the date on which Sherman Water Company actually relinquishes control and possession of the property herein authorized to be transferred, it shall file with this Commission a certified statement indicating the date upon which such control and possession were relinquished.

(c) Within ten days from the date of this order Sherman Water Company shall file with this Commission a statement showing the name and address of each person, firm, corporation and/or consumer entitled to refund of deposit on the date of this order, the amount and date of the original deposit and all refunds, if any, heretofore paid, together with a letter stating that said Sherman Water Company will, within ninety days from the date of this order, pay said refunds, and each and every thereof to the persons thereunto entitled. Thereafter, a monthly statement as of the first day of the month shall be filed with this Commission setting forth the name and address of each person, firm, corporation and/or consumer to whom refund has been made, and the date and the amount thereof. Disputes regarding the said refunds, or any of them, shall be referred to this Commission for further action and determination.

(d) Within ten days from the date of this order, Sherman Water Company shall file with this Commission, and shall cause to be published at least three times in a newspaper published in or in the vicinity of Beverly Hills, and of general circulation in the territory served, a notice to the effect that said company will pay to all persons entitled thereto the amounts of said unpaid deposits mentioned in paragraph (c).

Dated at San Francisco, California, this twenty-seventh day of March, 1928.

DECISION No. 19525.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY, A CORPORATION, AND PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING WESTERN STATES GAS AND ELECTRIC COMPANY TO FILE AND PLACE IN EFFECT THE REVISED SCHEDULES OF ELECTRIC RATES AND CHARGES REFERRED TO IN THIS APPLICATION.

Application No. 14511.

Decided March 29, 1928.

RATES—ELECTRICITY.—Pacific Gas and Electric Company authorized to substitute its own rates for electric light and power in territory formerly served by Western States Gas and Electric Company in Stockton and vicinity.

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J. Leroy Johnson, for the City of Stockton.
R. W. Duval, for Western States Gas and Electric Company and Pacific Gas and Electric Company.

LOUTTIT, *Commissioner*.

OPINION.

In this proceeding Western States Gas and Electric Company and Pacific Gas and Electric Company ask the Railroad Commission to make its order granting Western States Gas and Electric Company permission to withdraw certain schedules of electric rates in its Stockton Division and authorizing the substitution therefor of certain other schedules of rates to become effective on and after April 1, 1928.

A hearing in this matter was held in Stockton on March 27, 1928.

The principal effect of the proposed changes in schedule is a material reduction in the rates to a large majority of domestic and residential consumers, particularly in the portions of the schedules affecting the cost of operation of electrical appliances and household devices. The reasons advanced for such a reduction are the desirability of encouraging a greater use of household electrical appliances and thus the growth of load in this class of service, and the desirability of having uniform schedules over the territory of applicants, the Pacific Gas and Electric Company having already, by Decision No. 19397, under date of February 23, 1928, obtained authority from the Railroad Commission to place similar schedules in effect.

Some slight increases in the bills of a limited number of consumers in the city of Stockton and a larger number in unincorporated area will result. However, it appears that while these increases to individuals will amount to approximately $8,500 per annum, the reduction in rates will effect a saving of approximately $82,000 per annum to the consumers as a whole. This includes the effect of the proposed agricultural schedule which, while slightly increasing the bills of a few consumers now receiving service under the optional rate feature of the present schedule, will result in a reduction in rate to a large majority of agricultural consumers.

Since the proposed changes will result in an immediate substantial saving to the consumers as a whole, this application should be granted.

I recommend the following form of order:

ORDER.

Western States Gas and Electric Company and Pacific Gas and Electric Company having applied to the Railroad Commission for authority to make effective certain schedules, a public hearing having been held thereon, and the Railroad Commission being of the opinion that such authority should be given subject to certain provisions; therefore,

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It is hereby ordered, that:

1. Effective with bills based on regular monthly meter readings taken on and after April 1, 1928, Western States Gas and Electric Company may charge and collect for electric service, in its Stockton Division, the schedules of rates as set forth in Exhibit "A" attached hereto and made a part hereof. Such rates shall be filed with this Commission on or before April 1, 1928.

For all other purposes the effective date of this order shall be April 18, 1928.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-ninth day of March, 1928.

EXHIBIT "A."

SCHEDULE L-2.

(Superseding Schedules L-1 and L-2 now in effect.)

General Lighting Service.

Applicable to general domestic and commercial lighting service, including household appliances and small power service.

Territory.

Applicable to service within all incorporated limits served by the company.

Rate.

Service charge: Per meter per month ..... 50 cents

Energy charge (to be added to service charge):

First	200 k.w.h. per meter per month	5	cents per k.w.h.
Next	800 k.w.h. per meter per month	4	cents per k.w.h.
Next	2000 k.w.h. per meter per month	3	cents per k.w.h.
All over	3000 k.w.h. per meter per month	2½	cents per k.w.h.

Minimum charge: The service charge set forth above constitutes the minimum charge.

Special Conditions.

Single phase motors of an aggregate capacity of 5 h.p. or less may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter. The minimum charge applicable to this combination service shall be the same as that set forth above.

SCHEDULE L-3.

(Superseding Schedules L-1 and L-2 now in effect.)

General Lighting Service.

Applicable to general domestic and commercial lighting service, including household appliances and small power service.

Territory.

Applicable to service in entire territory served, outside of incorporated limits.

Rate.

Service charge: Per meter per month ..... 70 cents

Energy charge (to be added to service charge):

First	200 k.w.h. per meter per month	6	cents per k.w.h.
Next	800 k.w.h. per meter per month	5	cents per k.w.h.
Next	2000 k.w.h. per meter per month	4	cents per k.w.h.
All over	3000 k.w.h. per meter per month	3½	cents per k.w.h.

Minimum charge: The service charge set forth above constitutes the minimum charge.

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Special Conditions.

Single phase motors of an aggregate capacity of 5 h.p. or less may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter. The minimum charge applicable to this combination service shall be the same as that set forth above.

SCHEDULE L-4.

(Superseding Schedule L-3 now in effect.)

Street and Highway Lighting.

Applicable to service for street, highway and other public outdoor lighting installations, using bracket, mast arm, or center suspension construction, and supplied from overhead lines, where the company owns and maintains the entire equipment.

Territory.

Applicable to entire Stockton Division.

Rate.

	Lamp rating	Monthly charge per lamp, all-night service	Reduction for each hour reduction (monthly basis) in nightly service
Multiple lamps	25 watts	$0 95	1 cent
	40 watts	1 25	2 cents
	50 watts	1 45	3 cents
	60 watts	1 70	3 cents
	75* watts	2 00*	4 cents
	100* watts	2 50*	5 cents
	150* watts	3 20*	7 cents
	200* watts	3 75*	12 cents
	300* watts	4 40*	13 cents
	400* watts	5 00*	17 cents
	500* watts	5 40*	20 cents
Series lamps	60 candlepower	1 30	2 cents
	80 candlepower	1 65	3 cents
	100* candlepower	1 75*	4 cents
	250* candlepower	3 20*	7 cents
	400* candlepower	4 05*	12 cents

* Includes a refractor. A diffusing globe, special highway reflector, or equivalent special reflector will be supplied on request. A deduction of 15 cents per month will be made for each lamp not equipped with refractor, diffusing globe or special reflector.

Special Conditions.

For the purpose of calculating rates for less than all-night service, it will be assumed that the average hour of turning off all-night service is 5.30 a.m. and the average hours nightly service are:

All-night service.....(4000 hours per year) 11 hours per night
Moonlight service.....(2240 hours per year) 6 hours per night
Midnight service.....(2000 hours per year) 5½ hours per night

SCHEDULE L-5.

(Superseding Schedule L-4 now in effect.)

Street and Highway Lighting.

Applicable to street and highway and other public outdoor lighting installations using electroliers or ornamental lamp posts supplied from underground lines.

Territory.

Applicable in the city of Stockton, to installations of 10 electroliers or less.

Rate.

(a) The company to install, maintain and own the entire equipment.
$4.33 per electrolier per month.
(b) Consumer to own equipment but company to be responsible for all maintenance and replacements.
$3.30 per electrolier per month.

Special Conditions.

(1) Electroliers used to render service under this schedule will be required to conform to standard equipment already installed.
(2) The above schedules apply to midnight service; in case service is desired beyond midnight an additional charge will be made on the basis of 40 cents per month per rated kilowatt of lamp load connected for each hour burned after midnight. Service beyond midnight will not be rendered except when possible to do so on complete circuits.

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SCHEDULE D-2.

(Superseding Schedule C-1-B now in effect.)

General Domestic Combination Service.

Available, upon application, for domestic lighting in combination with heating, cooking or domestic power service (including lamp socket appliances).

Territory.

Applicable to service within all incorporated limits served by the company.

Rate.

Service charge: Per meter per month ..... 50 cents
Energy charge (to be added to service charge):
First 30 k.w.h. per month ..... 5 cents per k.w.h.
Next 140 k.w.h. per month ..... 3½ cents per k.w.h.
All excess k.w.h. per month ..... 1½ cents per k.w.h.

For residences, flats, or individual apartments of more than 6 rooms, 5 k.w.h. for each additional room will be added to the first block of 30 k.w.h.

Minimum Charge.

(a) Where no major equipment is installed, the minimum charge is the service charge.

(b) Where major equipment is installed, the minimum charge will be the service charge plus 40 cents per month for each k.w. of major equipment in excess of 2 k.w.

(c) Upon application by the consumer, the company will put the minimum charge on an annual basis of $36 per annum for the first 7 k.w. of major equipment plus $6 per annum for each additional kilowatt of such major equipment, provided the primary use of service is seasonal and further, provided the consumer signs a contract for service for a period of not less than one (1) year. The company reserves the right to bill the annual minimum charge proportionately throughout the year.

NOTE.—"Major Equipment" includes any device having capacity in excess of 1 k.w.

Special Conditions.

(a) This schedule applies only to single family dwellings and to separately metered flats and apartments where the consumer uses cooking or heating or domestic power appliances (including lamp socket devices) of at least 1 k.w. aggregate capacity.

(b) Any apartment house or group of apartments may receive service under this schedule through one meter, provided that each individual apartment included has permanently installed heating or cooking equipment of at least 2 k.w. capacity.

For this purpose, the first energy block only will be increased and will be made equal to the sum of the first energy blocks separately calculated for the individual apartments included. The rate of 5 cents per k.w.h. will be applied to the kilowatt-hours thus determined in the same manner as if they were the consumption of an individual service separately metered.

(c) Capacity of all equipment will be based on name plate rating, all equipment assumed as operating at 100 per cent power factor, and a rating in horsepower being converted to kilowatts at one to one.

(d) Single phase power schedule (5 h.p. or less) may be combined under this schedule.

(e) For the purpose of this schedule the number of rooms will be determined upon the customary real estate basis of rating. The tables following are illustrative of rooms to be counted and not to be counted.

To be counted[a]		Not to be counted	
Ballroom	Library	Alcove	Garage (without living quarters)[b]
Billiard room	Living room	Attic (unfinished)	Hallways
Bedroom	Music room	Bathroom	Laundry
Conservatory	Nursery	Barn (without living quarters)[b]	Pantry
Den	Observatory	Breakfast nook	Piazza
Dining room	Office	Butler's pantry	Porch
Drawing room	Parlor	Cellar	Portico
Dressing room	Reception room	Closet	Reception room (100 sq. ft. or less)
Gymnasium	Servant's room	Coal shed[b]	Sleeping porch
Kitchen	Studio	Dressing closet	Storage room
Kitchenette	Serving room		Toilet

[a] Rooms listed are to be counted whether they are wired or not.
[b] Each 200 watts connected load of yard, barn or other outhouse lighting will be counted as one room. Empty lamp sockets will be rated at 50 watts each.

SCHEDULE D-3.

(Superseding Schedule C-1-B now in effect.)

General Domestic Combination Service.

Available, upon application, for domestic lighting in combination with heating, cooking or domestic power service (including lamp socket appliances).

Territory.

Applicable to service in entire territory served by the company outside of incorporated limits.

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Rate.

Service charge: Per meter per month.....70 cents
Energy charge (to be added to service charge):

First	30 k.w.h. per month*	6	cents per k.w.h.
Next	140 k.w.h. per month	3½	cents per k.w.h.
All excess	k.w.h. per month	1½	cents per k.w.h.

* For residences, flats, or individual apartments of more than 6 rooms, 5 k.w.h. for each additional room will be added to the first block of 30 k.w.h.

Minimum Charge.

(a) Where no major equipment is installed, the minimum charge is the service charge.

(b) Where major equipment is installed, the minimum charge will be the service charge plus 40 cents per month for each k.w. of major equipment in excess of 2 k.w.

(c) Upon application by the consumer, the company will put the minimum charge on an annual basis of $36 per annum for the first 7 k.w. of major equipment plus $6 per annum for each additional kilowatt of such major equipment, provided the primary use of service is seasonal and further, provided the consumer signs a contract for service for a period of not less than one (1) year. The company reserves the right to bill the annual minimum charge proportionately throughout the year.

NOTE—"Major Equipment" includes any device having capacity in excess of 1 k.w.

Special Conditions.

(a) This schedule applies only to single family dwellings and to separately metered flats and apartments where the consumer uses cooking or heating or domestic power appliances (including lamp socket devices) of at least 1 k.w. aggregate capacity.

(b) Any apartment house or group of apartments may receive service under this schedule through one meter, provided that each individual apartment included has permanently installed heating or cooking equipment of at least 2 k.w. capacity.

For this purpose, the first energy block only will be increased and will be made equal to the sum of the first energy blocks separately calculated for the individual apartments included. The rate of 6 cents per k.w.h. will be applied to the kilowatt-hours thus determined in the same manner as if they were the consumption of an individual service separately metered.

(c) Capacity of all equipment will be based on name plate rating, all equipment assumed as operating at 100 per cent power factor, and a rating in horsepower being converted to kilowatts at one to one.

(d) Single phase power service (5 h.p. or less) may be combined under this schedule.

(e) For the purpose of this schedule the number of rooms will be determined upon the customary real estate basis of rating. The tables following are illustrative of rooms to be counted and not to be counted.

To be counted[a]		Not to be counted	
Ballroom	Library	Alcove	Garage (without living quarters)[b]
Billiard room	Living room	Attic (unfinished)	Hallways
Bedroom	Music room	Bathroom	Laundry
Conservatory	Nursery	Barn (without living quarters)[b]	Pantry
Den	Observatory	Breakfast nook	Piazza
Dining room	Office	Butler's pantry	Porch
Drawing room	Parlor	Cellar	Portico
Dressing room	Reception room	Closet	Reception room (100 sq. ft. or less)
Gymnasium	Servant's room	Coal shed[b]	Sleeping porch
Kitchen	Studio	Dressing closet	Storage room
Kitchenette	Serving room		Toilet

[a] Rooms listed are to be counted whether they are wired or not.

[b] Each 200 watts connected load of yard, barn or other outhouse lighting will be counted as one room. Empty lamp sockets will be rated at 50 watts each.

SCHEDULE P-3.

(Superseding Schedule P-3 now in effect.)

Agricultural Power Service.

Applicable to general agricultural and reclamation service, including pumping, feed choppers, milking machines, heating for incubators, brooders, poultry house lighting and general farm use, but excluding cooking and general lighting service.

Territory.

Entire territory served.

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Rate.

Size of Installation	Annual service charge per h.p.	Energy charge in addition to the service charge. Rate per k.w.h. for consumption per h.p. per year of: First 1000 k.w.h.	Next 1000 k.w.h	Next 1000 k.w.h.	All over 3000 k.w.h.
2–4 h.p.	$6.50*	1.6 cents	1.2 cents	0.9 cents	0.7 cents
5–14 h.p.	5.50	1.4	1.1	0.8	0.7
15–49 h.p.	5.00	1.2	1.0	0.8	0.7
50–99 h.p.	4.50	1.1	0.9	0.75	0.7
100–249 h.p.	3.90	1.1	0.9	0.75	0.7
250–499 h.p.	3.75	1.05	0.85	0.75	0.7
500–999 h.p.	3.60	1.00	0.85	0.75	0.7
1000–2499 h.p.	3.30	1.00	0.85	0.75	0.7
2500 h.p. and over	3.00	1.00	0.85	0.75	0.7

* In no case will the total annual service charge be less than $13 for single phase service, nor less than $19.50 for three phase service.

Special Conditions.

(a) Agricultural Year—

Meters on all agricultural services will be read by the company between April 1st and April 10th of each year and the above rates will apply to the yearly periods between such successive readings.

(b) Payment of Service Charges—

Service charges will be payable in six equal monthly installments beginning with the bill based on the regular May meter reading.

(c) Guaranteeing Rates for Larger Size Installation—

Any consumer may obtain the rate for a larger installation by guaranteeing the rates and service charge of that larger installation.

(d) Voltage—

When the company installs, owns and maintains the transformers the above rates apply to service rendered at 110, 220 or 440 volts under provisions of Rule and Regulation No. 2, at the option of the consumer and the energy will be metered on the secondary (low) side of the transformer.

When the consumer owns the transformers, service will be rendered at the distribution line voltage available and the service will be measured on the primary (high) side of the transformer.

(e) Credit for Ownership of Transformer by Consumer—

Consumers operating installations having a connected load of 50 h.p. or over and owning the transformers supplying such installations will be allowed the following credits:

Size of installation	Annual credit per h.p. of connected load
50–99 h.p.	$1 00 per h.p.
100–249 h.p.	90 per h.p.
250–499 h.p.	80 per h.p.
500–999 h.p.	70 per h.p.
1000–2499 h.p.	60 per h.p.
2500 h.p. and over	50 per h.p.

(f) Contracts—

The company may require a contract for service under this schedule for a period not to exceed three years when service is first rendered and thereafter from year to year.

(g) The service charge will be based on the largest load that may be connected at any one time. For the purpose of calculating service charge one kilowatt of lighting or heating load will be rated as one horsepower.

(h) Consumers permanently increasing or decreasing their connected load will have their bills adjusted as provided in Special Conditions (i) following, original load being considered as discontinuing service and the increased or decreased load as commencing service.

(i) Service Commenced or Discontinued During the Agricultural Year—

The following adjustments apply only in the case of service first begun or permanently discontinued and will not be made when installations shut down for a few months.

For a fractional agricultural year the rate will be modified as follows:

The service charge will apply to service taken between April 1 and September 30 at the rate of one-sixth of the annual charge per month.

The size of the blocks of energy charge will be multiplied by the factor in the following table corresponding to the month during which service is begun or discontinued:

Month in which service commences or is discontinued	Factor: New service	Factor: Discontinued service
April	1.0	.1
May	.9	.1
June	.8	.2
July	.7	.3
August	.6	.4
September	.5	.5
October	.4	.6
November	.3	.7
December	.2	.8
January	.1	.9
February	.1	.9
March	.1	1.0

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DECISION No. 19527.

MARVELOUS MARIN, A CIVIC ORGANIZATION,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY ET AL.

Case No. 2330.

E. F. DREGER ET AL.

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY.

Case No. 2349.

IN THE MATTER OF THE INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO RULES, REGULATIONS, PRACTICES, ETC., OF NORTHWESTERN PACIFIC RAILROAD COMPANY.

Case No. 2365.

Decided March 30, 1928.

SERVICE—RAILROAD.—Northwestern Pacific Railroad Company directed to carry out program of service improvements.

PLEADING AND PROCEDURE—SCOPE OF PROCEEDINGS.—Before any action is taken with respect to the abandonment of any facilities, such matters must be presented to the Commission by means of an appropriate application on the part of the carrier, and no final determination of such matters will be made in a complaint alleging poor service.

MONOPOLY AND COMPETITION—IN GENERAL—*per* CARR *concurring*.—The Commission should not be forestalled (in applying the rule in *P. G. & E. Co.* vs. *G. W. P. Co.*, 1 C. R. C. 203, 209–11) in pending applications of other agencies to enter portions of the general field served by a carrier, by an order directing certain improvements which such carrier has indicated its willingness to make.

Thos. P. Boyd, Thos. C. Jordan and *Albert C. Dibble*, for the Complainants.
Goodfellow, Eells, Moore and Orrick, by *Ralph W. Palmer* and *Edgar T. Zook*, for the Defendant.
Walter H. Robinson, for the Outdoor Art Club and Chamber of Commerce of Mill Valley.
A. H. Pape, for certain citizens of Kentfield.
E. F. Dreger, James H. Gilhuly and *William Kent*, for themselves and certain residents of Kentfield, Complainants.
Chas. R. Kenyon, for certain citizens of Woodacre, Olema, Lagunitas and Point Reyes.
G. T. Brisley, for certain residents of Almonte.
Lester H. Ferguson, in propria persona.
H. C. Simons, City Attorney, for the Town of Mill Valley.
Campbell Hardy, for the Sausalito Chamber of Commerce.
Harry See, for the Railroad Brotherhoods.
A. W. Garrett, J. H. McMinn and *R. H. Rosenberg*, for the Chamber of Commerce of Healdsburg.
J. H. Kirkpatrick, for the Chamber of Commerce of Ukiah.

WHITSELL, *Commissioner.*

OPINION.

In Case No. 2330, Marvelous Marin, a civic organization in Marin County, makes a number of specific and general complaints against the defendant and asks the Commission to investigate the service, safety and practices of the Northwestern Pacific Railroad Company; in Case No. 2349, E. F. Dreger, James H. Gilhuly and William Kent, on behalf

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of themselves and other residents of Kentfield, complain of the inadequacy of defendant's passenger station facilities at Kentfield; and, in Case No. 2365, the Commission, on its own motion, instituted an investigation into the rules, regulations, practices, operations, service, physical property and safety conditions and devices of the Northwestern Pacific Railroad Company.

A number of hearings were held at San Rafael on the three proceedings, which, by stipulation, were consolidated for hearing and decision.

In the early hearings, testimony was introduced by complainants as to the inefficient, inadequate and unsatisfactory service and facilities of defendant; and as to the third rail, which is the power conductor of this company's interurban system, being unsafe and not adequately protected and as to the system generally being under-maintained, particularly with respect to the interurban lines.

Following the initial hearings, the Engineering Department of the Commission, through its transportation engineer, J. G. Hunter, and other members of the Commission's staff, made a study of defendant's system as a whole, directing particular attention to the interurban lines in Marin County. The results of these investigations were incorporated in two reports, which were introduced in evidence as Commission's Exhibits Nos. 1 and 2 in these consolidated proceedings at the hearing on September 29, 1927. In these reports the Commission's engineers made specific recommendations for improvements on the Northwestern Pacific Railroad Company's lines, of which some forty referred to the interurban system.

A comparison of the recommendations contained in the reports of the Commission's engineers, with the more important specific items of relief requested by complainants in Cases No. 2330 and No. 2349, discloses that our engineers not only recommend improvements in all of the matters complained of, except three items, but go a great deal further and recommend a number of other improvements. The three items to which the Commission's engineers did not make recommendations, looking toward the correction of matters complained of in these cases, are as follows:

1. That the Corte Madera tunnel be double-tracked.

2. That the third rail of the interurban system be replaced with overhead trolley.

3. That the electric line be extended to Grand avenue in San Rafael and that a station be established at that point.

Following the presentation of reports by our engineers, the stockholders of the Northwestern Pacific Railroad Company, viz: Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, appointed a special committee to make an independent inves-

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tigation of the conditions complained of. A summary of the report of this special committee was filed at the hearing on February 11, 1928, as defendant's Exhibit No. 43. In this report the necessity of correcting many of the conditions complained of in this proceeding is conceded. The owner's special committee has concurred with most of the recommendations made by our engineering department, as set forth in Commission's Exhibit Nos. 1 and 2. In fact, the only important recommendations of our engineers, to which this committee took exception, were as follows:

1. Removal of interurban track on Second street, San Rafael.

2. Provision of protective covering over the third rail through swamp land and other undeveloped territory.

3. Provision of passenger stations on the west side of the tracks at Almonte, Baltimore Park and Kentfield, respectively.

4. Substitution of bus for train service on the Pt. Reyes-Monte Rio narrow-gauge line.

In view of this situation, a detailed discussion of the undisputed items appears unnecessary in this opinion, but the order should provide for the execution of all the relief justified by the record in this proceeding.

The three matters, complained of in Cases Nos. 2330 and 2349, which are not recommended for correction in the report of Commission's engineers, will now be discussed.

1. Double Tracking of the Corte Madera Tunnel.

The record shows that the operation through this tunnel, as now conducted, is reasonably protected by means of modern automatic and interlocked signals and also by means of train directors stationed at each end of the tunnel during times of peak travel. A traffic check, taken by the Commission's engineers on Friday, July 29, 1927, showed that between the hours of 7 a.m. and 7 p.m. there was a total delay to trains at this tunnel of seven minutes, as follows:

Electric passenger trains	1½ minutes
Steam passenger trains	1½ minutes
Electric baggage car (running extra)	3 minutes
Steam freight train (running extra)	1 minute

The record does not indicate that trains are unnecessarily delayed, due to the fact that this is a single track tunnel. It thus appears that although double track would be preferable to single track, the delay and hazard on this stretch of single track, under present operation, does not justify an expenditure in excess of half a million dollars for its correction. If, however, train service should be materially increased in the future, the expense of double tracking this tunnel may then be justified.

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2. Changing Third Rail to an Overhead Trolley System.

It is pointed out in the report of the Commission's engineers that if defendant's interurban system were to be newly built at this time, it would be more desirable to have an overhead trolley system than the existing third rail power line. However, to make such a change at this time would require an expenditure estimated at $552,000, exclusive of any changes in substations or other facilities. The record shows that this company's electric interurban operation is entirely on private right of way, except at grade crossings and over that portion of the line on Second street in San Rafael, a distance of about 1100 feet. This Second street situation is discussed later in this opinion. The record does not justify a conclusion that the large expenditure necessary to rebuild defendant's energy contact system, from third rail to overhead trolley, is justified at this time.

3. Extension of the Electric Line to Grand Avenue, San Rafael.

This change would require the acquisition of additional right of way and land for electric train terminal facilities at Grand avenue. The public convenience to be served by this addition hardly justifies the large expense necessary for such an improvement. If, however, there is a change in the method of operation between the Union Station at San Rafael and points to the north on the main line, such as the substitution of gas electric cars for steam service, a stop might appropriately be established at Grand avenue to accommodate passengers in that vicinity.

The recommendations contained in the report of Commission's engineers, to which the Railroad Committee takes exception, will now be discussed.

1. Track on Second Street, San Rafael.

From the evidence presented, I am convinced that the operation of trains on Second street, San Rafael, under present conditions, presents a real public menace and that this situation should be corrected. The newly chosen president of the company, E. H. Maggard, stated at the hearing, held on February 21st, that he recognized this hazard, but had not yet satisfied himself as to the best plan by which the hazard can be eliminated. It therefore appears proper that the order herein should require the company to prepare and file with the Commission, within a reasonable time, for its approval, a suitable plan for correcting the existing hazardous condition and thereafter to promptly carry such approved plan into effect.

2. Protection for the Third Rail.

The committee agrees that the third rail should be protected with a covering through all developed territory but does not consider that

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such protection is necessary along the line through undeveloped territory. There appears to be some merit in the committee's contention. While it would be desirable to have the rail covered throughout the entire system, no great hazard will result if the work of covering the rail, through the swamp and undeveloped district through which the interurban lines run, is deferred for the present. I do not believe the full program recommended by our engineers in this regard can be justified at this time. However, I am convinced, in view of the recent accident near Mill Valley High School, that in addition to the permanent covering in built-up territory, temporary protection should be installed along the third rail, where noncompany men are working in close proximity to it.

3. Additional Shelter Stations.

With respect to providing stations on the west side of the tracks at Almonte, Baltimore Park and Kentfield, the committee takes the position that the traffic does not justify this expenditure, which amounts to about $700 per station. The record shows that the existing station facilities at these points are not adequate and are improperly located, and I am of the opinion that the comparatively small expense required to provide these stations is justified, as passengers are reasonably entitled to shelter during stormy weather, and such shelter should be located on the side of the track where patrons are required to stand when boarding trains.

4. Substitution of Bus Line for Steam Trains on Pt. Reyes-Monte Rio Line.

The Commission's engineers recommend that the steam service on this line be replaced with bus service, which will result in an estimated annual saving of approximately $58,000. The committee, however, takes the position that since the revenue received from this line fails to meet operating expenses by an amount of approximately $53,000, it should be abandoned. As will be set forth later, no final determination of this item is necessary in these proceedings.

Abandonment of Facilities.

In the report of the Commission's engineers, Exhibit No. 1, consideration is given to the matter of reducing the operating expenses of the company by the elimination of steam service on certain lines and the substitution therefor of service by means of gas electric cars; also, the discontinuance of agencies at B street and West End stations, San Rafael, Ross, Kentfield and Corte Madera, after the company has placed in operation the Ohmer registers and has provided for the checking of baggage by the train crew.

Before any action is taken, with request to the abandonment of any facilities, such matters must be presented to the Commission by means

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of an appropriate application on the part of the carrier. No final determination of such matters will be made, therefore, in these proceedings.

The record clearly indicates that the service on the San Geronimo Valley Branch and also the Sonoma Valley Branch could be improved and that such improvement could be brought about by the substitution of gas electric motor cars for steam trains. This same condition exists, but perhaps to a lesser or seasonal degree, on the Guerneville Branch and the local line between Healdsburg and Sausalito. The company has indicated that it desires to give further study to a comparison between gas electric motor car service and auto stages on the various lines under consideration. This request appears to be reasonable, but the company should take steps to immediately proceed to work out a plan whereby an improved service can be afforded on these lines at the least cost.

Referring to the important recommendation made by our engineers that the company adopt a program of replacing its old wooden interurban equipment with modern steel equipment, President Maggard, at the last hearing, made a statement that the company proposes to purchase five new motor and five new trailer cars, to up-to-date type, at a cost of about $255,000, and that this new equipment will be available for operation as promptly as it can be designed and built.

Testimony was offered to show that considerable public hazard results from the lack of gates and wooden platforms on interurban cars. It appears that this is a feature to consider in passing on the plans of any new equipment. However, the record does not appear to justify requiring the company to remodel the equipment now in use, since it is planned to replace these cars with new equipment within a reasonable period of time.

It appears that there are some seven motor cars and nineteen trailer cars, of wooden construction, both body and underframe, which have been in service for over twenty years, and I am convinced that all of these cars should be replaced with modern steel equipment within the next few years. Many other cars are also nearing the end of their useful life and these, too, should be replaced under some progressive plan.

President Maggard further stated that in the near future the company plans to replace, with new structures, in accordance with the engineer's recommendations, the stations at Ukiah and Healdsburg, and also the Union station, B street station and West End station, San Rafael. The stations at Sausalito, Tiburon, Mill Valley and Ross will also be improved.

On page 79 of Commission's Exhibit No. 1 is set forth a recommendation relative to protecting the public against the power rail within the

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limits of station grounds by constructing suitable top and side coverings as well as fences. It appears that this recommendation has met with the approval of the carrier and is now being effected.

The record clearly shows that considerable public hazard exists at grade crossings, due to inadequate protection of the third rail. The situation can be materially improved by the construction of appropriate wing fences and cattle guards and requiring that no part of the third rail shall extend over the cattle guards, together with the construction of a heavy covering over the energized rail for a distance of at least 25 feet from the end thereof, as set forth in Commission's Exhibit No. 1, page 80.

It appears that the recommendations contained in our engineers' report, Commission's Exhibit No. 1, page 69, relative to improving the appearance of the station grounds at the various stations along the company's interurban lines, are reasonable and that this comparatively small expense is justified.

The record shows that the standard of maintenance, with respect to grade crossings and track structures, is rather low and the recommendations contained in the report of the Commission's engineers, Exhibit No. 1, with respect to these matters, should be carried out and a reasonably high standard of maintenance established.

Since there appears to be no disagreement as to the recommendations contained in the report of the Commission's engineers, Exhibit No. 2, with respect to improving the power situation, there seems to be no necessity of discussing these matters, further than to state that these recommendations appear to be of major importance for good service and the company should proceed forthwith to put them into effect.

It appears that the complaint, with respect to train and boat schedules, has been taken care of and need not further be considered in this decision.

The following form of order is recommended:

ORDER.

Public hearings having been held on the above numbered proceedings, the Commission being advised of the facts, the matters being under submission and ready for decision; therefore,

It is hereby ordered, that Northwestern Pacific Railroad Company be and it is hereby directed to improve its service and facilities by complying with each of the following requirements:

1. Construct, in accordance with plans to be approved by the Commission, new stations at Union station, B street station and West End station, San Rafael, Marin County; Ukiah, Mendocino County, and Healdsburg, Sonoma County.

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2. Reconstruct or improve, in accordance with plans to be approved by the Commission, its stations at Sausalito, Tiburon, Mill Valley and Ross, as well as maintain a reasonably high standard at other stations on its line.

3. Construct, in accordance with plans to be approved by the Commission, shelter stations on the west side of the track at Almonte, Baltimore Park and Kentfield.

4. File with the Commission, for its approval, within three months from the date of this order, a plan providing for the elimination of the hazard of third rail operation on Second street, San Rafael. Upon receiving the approval of the Commission, the company shall proceed to have such approved plan put into effect as expeditiously as possible.

5. Protect third rail with a covering at all stations and throughout the entire territory traversed by the line, except that if the company so elects, such third rail covering may be omitted in marsh territory on that portion of the line between Pine street, Sausalito, and Almonte and between Almonte and west end of Corte Madera tunnel, between Baltimore Park and Green Brae and between California Park and San Rafael, except at station grounds.

6. Provide a protective covering for third rail contact shoes and other exposed energized surfaces on all interurban equipment.

7. Submit, for the Commission's approval, within three months from the date of this order, a plan of improving the service on its line serving the San Geronimo Valley.

8. Proceed to carry out all the recommendations outlined in the Commission's Exhibit No. 1, pages 59, 60 and 61, with respect to improving grade crossings.

9. Proceed to carry out all the recommendations contained in the Commission's Exhibit No. 1, pages 30 to 38, inclusive, with respect to correcting impaired clearances and unsafe conditions in tunnels and on bridges.

10. Proceed to improve the power situation on its lines substantially in accordance with the recommendations in Commission's Exhibit No. 2.

11. Submit, for the Commission's approval, a plan of renewing equipment and promptly proceed to purchase and place in operation five new motor cars and five new trailer cars, of a detail design to be submitted to the Commission, for approval, within three months from the date of this order.

12. File monthly progress reports, until otherwise directed by the Commission, showing the progress that has been made in carrying out the terms of this order.

Except as otherwise specifically provided above, all acts herein directed to be done, shall be undertaken forthwith and carried out to consummation with all reasonable diligence and expedience.

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For all other purposes the effective date of this order shall be twenty days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of March, 1928.

LEON O. WHITSELL,
C. L. SEAVEY,
EZRA W. DECOTO,
THOS. S. LOUTTIT,
Commissioners.

I concur in the order. However, in view of the fact that there are now before this Commission applications from other utilities and agencies seeking to enter portions of the general field served by the Northwestern Pacific it should be pointed out that the order does little more than to direct what the company, on or about February 21, 1928, and in the course of the proceedings, indicated its willingness and purpose to do. This fact may or may not prove to be of importance in determining these other applications. This Commission, as early as 1912, in *Pacific Gas and Electric Company* vs. *Great Western Power Company*, 1 C. R. C. 203, 209–11, announced the salutary principle that

> "only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons that this Commission shall find that such patrons are adequately served at reasonable rates."

A contrary rule as there pointed out would mean

> "that old utilities would keep their territory unspurred by the fear of competition, knowing always that only when it was imminent need they prepare to do justice to their patrons."

This principle is one of great importance. It may be invoked in the applications referred to. If so, the Commission in considering and applying it should not be embarrassed or forestalled by this order which is entitled to no other or further effect than the particular facts and circumstances upon which based justify and require.

W. J. CARR,
Commissioner.

DECISION No. 19529.

IN THE MATTER OF THE APPLICATION OF THE PICKWICK STAGES SYSTEM, A CORPORATION, AND THE MOUNT LASSEN TRANSIT COMPANY, A CORPORATION, FOR AUTHORITY TO INCREASE THE JOINT ONE-WAY FARE BETWEEN SACRAMENTO AND WESTWOOD.

Application No. 13880.
Decided March 30, 1928.

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RATES—AUTO STAGES.—Pickwick Stages System and Mt. Lassen Transit Company authorized to increase joint one-way fare between Sacramento and Westwood to $9.18.

RATES—AUTOMOTIVE TRANSPORTATION—JOINT RATES.—A joint stage fare was authorized in order to meet the fare charged by other carriers and to make the charge over four routes uniform.

Libby and Austin, by *Frank B. Austin*, for Applicants.
George Scruggs, for Sacramento Northern Railway and The Western Pacific Railroad Company, Interested Parties.

BY THE COMMISSION.

OPINION.

This is an application of the Pickwick Stages System, a corporation, and the Mount Lassen Transit Company, a corporation, both organized under the laws of the State of California, seeking authority to increase the joint one-way fare between Sacramento and Westwood from $8.68 to $9.18. The fare of $8.68 is now published in Motor Carriers' Tariff Bureau Tariff C. R. C. No. 12, F. J. Coulter, agent, and became effective October 21, 1926.

A public hearing was held at Sacramento March 13, 1928, before Examiner Geary, and the application having been submitted is now ready for an opinion and order.

In Application No. 11087, Decision No. 14916, May 12, 1925, the Shasta Transit Company (predecessor in interest of the Pickwick System under a transfer of the operating rights in Application No. 13170, Decision No. 17409, dated October 1, 1926) and Mount Lassen Transit Company were granted authority to establish joint passenger fares between Sacramento and Westwood and between Redding and Westwood. The fare of $8.68 here under consideration was at the time of decision in Application No. 11087 in effect via three other routes, namely, the Western Pacific to Paxton, thence Indian Valley Railroad to Crescent Mills and Scott Stage Line; via the Western Pacific to Keddie and Mount Lassen Transit Company; and via the Sacramento Northern to Chico and the Sacramento-Westwood-Susanville Stage Line. There was also a service via the Southern Pacific through Fernley, Nevada, at a fare of $10.18.

The Mount Lassen Transit Company purchased all of these stage lines, and by authority of this Commission in Application No. 12389, Decision No. 16411, April 5, 1926, was authorized to readjust all of the fares of the consolidated system. This adjustment was made not to increase the net revenues of the Mount Lassen Transit Company but to remove many inconsistent, discriminatory and unjust fares found to exist by reason of the struggle for the traffic between the prior operators. The fare of the Mount Lassen Transit Company between Keddie and Westwood was increased 50 cents. Following Decision No. 16411 the Southern Pacific Company published a fare of $9.18,

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effective April 15, 1926, between Sacramento and Westwood via Red Bluff. The Western Pacific, effective July 6, 1926, also published the fare of $9.18 via its two gateways through Paxton and Keddie, and it is to meet this fare and make the charge over the four routes uniform that this application was filed.

The distance between Sacramento and Westwood via the route under consideration is 224 miles, divided Pickwick Stages, Sacramento to Red Bluff 138 miles, and Mount Lassen Transit Company, Red Bluff to Westwood 86 miles. That portion of the route between Red Bluff and Westwood is through a mountainous territory, over the summits and passes of the Sierra Nevada Mountains, where route conditions frequently render traffic very difficult. An exhibit shows that this branch of the Mount Lassen Transit Company between Red Bluff and Westwood is not now being operated at a profit. In order to establish this proposed joint fare each of the carriers must shrink its normal local fare.

We are of the opinion the proposed fare of $9.18 between Sacramento and Westwood via the Pickwick Stages System and the Mount Lassen Transit Company is a reasonable fare and that these applicants should be permitted to make the change in order to place the fare via all four routes on a parity.

ORDER.

This application having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that the Pickwick Stages System, a corporation, and the Mount Lassen Transit Company, a corporation, be and they are hereby authorized to establish a joint one-way passenger fare of $9.18 between Sacramento and Westwood, the Pickwick Stages performing the transportation service between Sacramento and Red Bluff and the Mount Lassen Transit Company the service between Red Bluff and Westwood.

Dated at San Francisco, California, this thirtieth day of March, 1928.

DECISION NO. 19530.

IN THE MATTER OF THE APPLICATION OF THE PICKWICK STAGES SYSTEM, A CORPORATION, AND E. C. CRAIG, FOR THE FORMER TO LEASE TO AND THE LATTER TO HIRE FROM CERTAIN OPERATIVE RIGHTS OF THE FORMER FOR THE TRANSPORTATION OF PASSENGERS AND EXPRESS MATTER BETWEEN BUELLTON AND LOS OLIVOS AND INTERMEDIATE POINTS, INCLUDING SOLVANG AND SANTA YNEZ.

Application No. 14049.

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SOREN SORENSON

vs.

PICKWICK STAGES SYSTEM AND E. C. CRAIG.

Case No. 2450.

Decided March 30, 1928.

AUTOMOTIVE TRANSPORTATION—LEASE OF OPERATIVE RIGHTS.—Application of Pickwick Stages System to lease operative right between Buellton and Los Olivos to E. C. Craig denied.

PLEADING AND PROCEDURE—SCOPE OF PROCEEDINGS.—In an application to lease an operative right, evidence of protestants to the effect that service had been abandoned was excluded as constituting a collateral attack upon the validity of such existing operating right. The question of abandonment can be raised only in a direct proceeding.

AUTOMOTIVE TRANSPORTATION—LEASE OF OPERATIVE RIGHTS.—The principle, in matters involving sales, that an operative right is indivisible should apply with equal force in cases where a lease of a portion of a larger operative right is sought. (*Joseph Held*, 20 C. R. C. 330; *W. Kielhofer*, 23 C. R. C. 114; *Pickwick Stages System*, 31 C. R. C. 260.)

AUTOMOTIVE TRANSPORTATION—LEASE OF OPERATIVE RIGHTS.—Ordinarily, public interest will not be served by permitting a lease of an operative right when the owner obviously desires to divest himself of the burden thereof, yet seeks to preserve his certificate because of possible future value. If public need requires the continuation of service which another is ready to render his interest should not be limited to that of a mere lessee.

Warren E. Libby and *Frank B. Austin*, for Pickwick Stages System and E. C. Craig, Applicants.

Coleman E. Stewart, for Complainant and Protestant.

BY THE COMMISSION.

OPINION.

On September 6, 1927, the Pickwick Stages System filed with this Commission the above Application No. 14049, praying that it be permitted to lease to E. C. Craig a certain operative right for the transportation of passengers and express between the towns of Buellton and Los Olivos in the county of Santa Barbara. A hearing thereon was held September 19, 1927. At that hearing Soren Sorenson, complainant in the above Case No. 2450, protested the granting of the application of the Pickwick System to lease such route to Craig, and offered to introduce evidence to the effect that the Pickwick System had abandoned all service thereon. Such evidence was excluded on the ground that it constituted a collateral attack upon the validity of the existing operative right, the protestant being advised that the question of abandonment could be raised only in a direct proceeding. On October 4, 1927, the Commission issued its Decision No. 18885, granting said application to lease.

Subsequently Soren Sorenson filed the above entitled complaint against the Pickwick System specifically alleging abandonment of such operative right. The Commission thereupon issued its order reopening the above application for further hearing. The two matters were con-

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solidated and a public hearing held thereon before Examiner Rowell on January 31, 1928.

We are of the opinion that the evidence introduced by complainant Sorenson was not of sufficient weight to justify a finding of abandonment and the issuance of an order revoking such operative right. We are convinced, nevertheless, that, in view of the evidence offered by complainant, as well as the declarations of the Pickwick System itself, a lease of such right to Craig should not be permitted and that the previous order of the Commission granting the above application should be set aside.

The line which the Pickwick System seeks to lease runs from Buellton to Los Olivos via Solvang and Santa Ynez. The application states that this is the operative right granted by Decision No. 10079 on Application No. 7508. That decision, however, granted a right from Solvang to Santa Ynez only and not the whole of the route in question. The Pickwick System undoubtedly has the right to serve all of the above towns, but such right is derived from Decision No. 14464 which effected a consolidation of most of its various existing operative rights between Los Angeles and San Francisco. It is apparent, therefore, that the right which applicant seeks to lease is only a portion of a larger operative right. This Commission has frequently, in matters involving sales, held that an operative right is indivisible. This principle should apply with equal force in cases where a lease of part of a right is sought. (Decision No. 11692, 23 C. R. C. 114; Decision No. 9319, 20 C. R. C. 330; Decision No. 19412.)

Reference to earlier decisions granting certificates to the Pickwick System to operate in this vicinity, reveals that the route over which the stages were at one time operated between Los Angeles and San Francisco traversed the Santa Ynez Valley and included the towns of Solvang, Santa Ynez and Los Olivos. Since the completion of a new highway to the westward all through stages have been routed by way of Buellton, the towns of Solvang, Santa Ynez and Los Olivos being served by a branch line. The reasons prompting Pickwick System to enter into such lease agreement, as set forth in its application, are that such service is essentially local, a branch service only, and that its operation requires the personal attention of one familiar with the needs of the local communities and who is able to operate it more economically. The testimony offered by the complainant and protestant, as well as that of the Pickwick System itself, shows that the demand along this route for express service is negligible. The Pickwick System admits that it has been rendering service not more than once a week. Craig, the proposed lessee, already possesses a certificate for the transportation of passengers and is rendering a daily service over the identi-

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cal route, so that the only additional service to be assumed by him under the proposed lease is the express service now rendered by Pickwick.

Thus it is apparent that the Pickwick Stages System seeks to lease, for the nominal rental of $1 per year, an operative right which is not now an integral part of its main transportation system, which service it has for several years rendered in a desultory way, and which obviously is financially unprofitable. From its own statements we are compelled to conclude that it desires to divest itself of its obligation to carry passengers and express over a route which has come to be merely a branch of its main transportation system, and, accordingly, we feel that it should make application to abandon such right rather than to lease the same. (See Decision No. 19412.) We are of the opinion that ordinarily the public interest will not be served by permitting a lease of an operative right when the owner obviously desires to divest himself of the burden thereof, yet seeks to preserve his certificate because of possible future value. If the public need requires that the service be continued and another is ready to render such service, his interest therein should not be limited to that of a mere lessee.

The applicant has questioned the jurisdiction of the Commission to admit, in a proceeding not brought by the Commission itself, evidence attacking the validity of an existing operative right, but that question need not be considered here. The defendant is deprived of no property right. The only question considered is whether public convenience and necessity require that the application to lease be granted or denied.

Accordingly, the complaint in Case No. 2450 will be dismissed and Application No. 14049 denied.

ORDER.

The above entitled application having been heard on September 19, 1927, a decision thereon, No. 18885, rendered on October 4, 1927, and thereafter on January 23, 1928, by order of the Commission, said application being reopened for further hearing, and such further hearing having been had, the matter submitted and now being ready for decision:

The Railroad Commission of the State of California hereby finds that public convenience and necessity do not require the Pickwick Stages System, Inc., to lease to E. C. Craig an operative right for the transportation of passengers and express between Buellton and Los Olivos; and

It is hereby ordered, that Decision No. 18885, dated October 4, 1927, granting the above application No. 14049, be and the same hereby is rescinded, and that said Application No. 14049 now be and the same hereby is denied.

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It is hereby further ordered, that the above entitled Complaint No. 2450 be and the same is hereby dismissed.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this thirtieth day of March, 1928.

DECISION No. 19531.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, GRANTING TO APPLICANT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE THE RIGHT, PRIVILEGE AND FRANCHISE GRANTED TO APPLICANT BY ORDINANCE No. 293 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA.

Application No. 14427.
Decided March 30, 1928.

CERTIFICATES—ELECTRIC UTILITY.—Pacific Gas and Electric Company granted a certificate to distribute electric energy in part of Santa Cruz County.

R. W. Duval, for Applicant.

BY THE COMMISSION.

OPINION.

In this application, Pacific Gas and Electric Company asks the Railroad Commission for an order declaring that public convenience and necessity require the exercise by it of the rights and privileges of franchise granted by the county of Santa Cruz.

Public hearing before Examiner Rowell was held March 2, 1928, in the city of San Francisco, at which time testimony was introduced and the matter submitted for decision.

It appears that Pacific Gas and Electric Company has received application for electric service from Woodwardia Inn located on the Los Gatos-Santa Cruz state highway in Santa Cruz County, approximately one thousand feet from applicant's electric facilities in Santa Clara County. Applicant alleges that it can justify extension of facilities to Woodwardia Inn under its extension rule and proposes to serve other prospects in this general area as soon as the growth in business will warrant.

An exhibit entitled "Proposed Electric Distribution in Santa Cruz County" was filed by applicant. This purports to show the location of Woodwardia Inn, the other prospective business in the same general territory and the nearest electric facilities of the Coast Counties Gas and Electric Company with respect to applicant's electric facilities. The evidence shows that the Coast Counties Gas and Electric Company, the nearest electric utility serving in Santa Cruz County, is some four or five miles away from the prospective consumers indicated by appli-

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cant and that these prospective consumers are nearer to the facilities of applicant than the facilities of any other electric utility. The testimony makes apparent that public convenience and necessity require and will require electric service in this area.

No one appeared in opposition to the application and applicant stipulated that it would not, without permission from the Railroad Commission, make any extension of its electric system in territory in Santa Cruz County now supplied with electric service by any other electric utility or in territory reasonably contiguous to the electric lines of any other utility.

The board of supervisors of Santa Cruz County on January 23, 1928, granted to applicant a franchise (Ordinance No. 293), marked Exhibit "A" and made a part of the application, to construct, maintain and operate electric facilities in Santa Cruz County. Applicant has filed with this Commission a resolution of its board of directors to the effect that applicant, its successors or assigns, would never claim before the Railroad Commission or any court or public body any value for the aforesaid franchise in excess of the actual cost thereof, which cost was $100.

We have carefully considered the evidence in this proceeding and are of the opinion that this application should be granted subject to certain restrictions.

ORDER.

Pacific Gas and Electric Company having applied to the Railroad Commission for a certificate of public convenience and necessity for the exercise of certain rights and privileges granted by the county of Santa Cruz under Ordinance No. 293, public hearing having been held, the matter being submitted and now ready for decision;

The Railroad Commission of the State of California hereby certifies and declares that public convenience and necessity require and will require the exercise by Pacific Gas and Electric Company of the rights and privileges granted by Ordinance No. 293 of the board of supervisors of Santa Cruz County, subject to the following conditions:

(1) That applicant will not, without further permission of the Railroad Commission authorizing it so to do, make any extension of its electric system in territory in Santa Cruz County now or subsequently supplied with electric service by any other electric utility, or in territory reasonably contiguous to the electric lines of any other utility.

(2) That the Railroad Commission may hereafter by appropriate proceedings and orders revoke or limit, as to territory not then served in Santa Cruz County by Pacific Gas and Electric Company, the authority herein granted.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this thirtieth day of March, 1928.

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DECISION No. 19539.

IN THE MATTER OF THE INVESTIGATION OF THE GAS RATES, SERVICE AND OPERATIONS OF MODESTO GAS COMPANY ON THE COMMISSION'S OWN MOTION.

Case No. 1662.

Decided March 30, 1928.

RATES—GAS UTILITY.—Due to decrease in price paid for oil, rates of Modesto Gas Company ordered reduced.

BY THE COMMISSION.

SEVENTH SUPPLEMENTAL ORDER.

Whereas, in Decision No. 9839 (20 C. R. C. 948) this Commission provided with reference to schedules "A" and "B" of Modesto Gas Company, that such rates would be subject to increase or decrease on the basis of 2.6 cents per thousand cubic feet of gas for each ten cents increase or decrease, respectively, in the price of oil above or below $2 per barrel f.o.b. Modesto; and

Whereas, Modesto Gas Company now makes affidavit that the price paid for oil has been further reduced ten cents per barrel to $1.25 per barrel in Modesto which is seventy-five cents per barrel below the base price upon which rates were established in Decision No. 9839;

It is hereby ordered, that Modesto Gas Company reduce its rate designated as schedule "A," effective for all regular meter readings taken on and after April 15, 1928, so that said rates shall be twenty cents per thousand cubic feet less than the basic rate established in Decision No. 9839.

It is hereby further ordered, that Modesto Gas Company file with this Commission on or before April 10, 1928, a revision of its schedules to comply with this order.

Dated at San Francisco, California, this thirtieth day of March, 1928.

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DECISION NO. 19540.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA WATER SERVICE COMPANY, A CORPORATION, FOR (1) ORDER AUTHORIZING THE ISSUE OF STOCKS AND BONDS; (2) ORDER AUTHORIZING MORTGAGE OF CERTAIN PUBLIC UTILITY PROPERTIES, AND (3) JOINTLY WITH C. B. JACKSON, CHICO WATER SUPPLY COMPANY, A CORPORATION; PORT COSTA WATER COMPANY, A CORPORATION; FRESNO CITY WATER CORPORATION, A CORPORATION; VISALIA CITY WATER COMPANY, A CORPORATION; ELECTRIC WATER COMPANY, A CORPORATION; BAKERSFIELD WATER WORKS, A CORPORATION, AND HERMOSA-REDONDO WATER COMPANY, A CORPORATION, RESPECTIVELY, FOR ORDER AUTHORIZING THE PURCHASE AND SALE OF CERTAIN PUBLIC UTILITY SECURITIES AND PROPERTIES, AND JOINTLY WITH PETALUMA POWER AND WATER COMPANY, A CORPORATION; BELVEDERE WATER CORPORATION, A CORPORATION, AND C. B. JACKSON, FOR ORDER AUTHORIZING THE PURCHASE AND SALE OF CERTAIN PUBLIC UTILITY SECURITIES AND PROPERTIES, ADDITIONAL PETITIONERS.

Application No. 13514.

Decided March 31, 1928.

SECURITY ISSUES—NOTES.—California Water Service Company authorized to issue and sell at par to Federal Water Service Corporation not exceeding $923,938 of 6 per cent unsecured notes and to execute mortgage and/or deed of trust. Decision 19467 (31 C. R. C. 327) modified and amended.

SECURITY ISSUES—CONDITIONS UPON WHICH AUTHORIZATION GRANTED.—A subsidiary company was authorized to issue notes to a parent corporation on condition that the notes be issued as nonnegotiable notes and that they contain a provision obligating the subsidiary to pay both principal and interest only out of surplus available for distribution as dividends to holders of common stock or from contributions by, or assessments on, such common stockholders, and that none of said payments be made from cash realized from the sale of assets or from borrowed money or offset by its reserve for accrued depreciation, and that payments, when and as made, be charged to surplus.

MORTGAGE.—There should be eliminated from a proposed mortgage and/or deed of trust and from bonds a provision giving certain immunity to incorporators, stockholders, officers and directors.

SECURITY ISSUES—NATURE AND KIND.—MORTGAGE OR DEED OF TRUST PROVISIONS.—It is the policy of the Commission, except under extraordinary conditions, to authorize the issue of bonds in amounts not exceeding 60 per cent of the cost or reasonable value, whichever is less, of assets acquired.

SECURITY ISSUES—NATURE AND KIND—MORTGAGE OR DEED OF TRUST PROVISION.—In authorizing the execution of a mortgage and/or deed of trust prohibiting the trustee from certifying bonds in excess of 75 per cent of the cost or reasonable value, whichever is less, of assets acquired, the Commission will be under no obligation to authorize the issue of bonds up to 75 per cent of said cost or reasonable value.

BY THE COMMISSION.

SUPPLEMENTAL ORDER.

California Water Service Company on March 24th filed a petition in the above entitled matter wherein it asks the Commission to modify Decision No. 19467, dated March 12, 1928, so as to permit the California Water Service Company to issue and sell at par to Federal Water Service Corporation $1,000,000 face value of its 6 per cent

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unsecured notes, payable not later than February 1, 1933; to modify paragraph seven of said order so that any sum which must be charged to a suspense account be held by said applicant in such account subject to the further order of the Commission and to execute a mortgage and/or deed of trust substantially in the same form as that filed in this proceeding except that there be eliminated from such mortgage and/or deed of trust the provision which gives certain immunity to incorporators, stockholders and directors of California Water Service Company.

By Decision No. 19467 the Commission, among other things, authorized the California Water Service Company to issue and sell at not less than 90 per cent of its par value $2,130,700 of common and $2,130,600 of 6 per cent preferred stock and at not less than 92 per cent of their face value and accrued interest $6,254,000 of first mortgage twenty-five-year bonds subject to the provisions and conditions in said decision. In that decision the Commission recites that if the California Water Service Company desires to pay more, or does in fact pay more, than the amount realized from the sale of the securities authorized by said decision for the properties or the stock of the several companies in question, the difference between said amount and such price as the vendee may actually pay must therefore be obtained in some manner other than through the issuance of such authorized securities. The Commission in its decision further recites that inasmuch as the California Water Service Company possesses no surplus, it will provide in its order that any such overcost shall be charged to a suspense account from which account all such charges shall be amortized by deductions from gross corporate income as that term is used in our annual report forms, or by charges to surplus.

In connection with the supplemental petition now before the Commission, California Water Service Company reports that the cost of all properties involved in this proceeding, without including any allowance for organization expense, was $10,914,856. The Commission in Decision No. 14967 authorized the issued of securities which at the minimum prices fixed by the Commission in that decision will net $9,588,811.53 or $1,326,045 less than the aforementioned cost of the properties as reported by the California Water Service Company. The $9,588,811.53 includes an allowance for organization expenses. The company now reports that the Federal Water Service Corporation will purchase the common stock authorized by the Commission's decision at par instead of at 90, and further, believes that it will be able to sell its bonds at 94 per cent of their face value and its preferred stock for 93 per cent of its face value. If these amounts are realized the company will net from the sale of the securities authorized by the Commission $9,990,918 or $923,938 less than the above mentioned cost.

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The company proposes to issue its notes in denominations of not less than $100,000 and in the aggregate amount of the difference between what it will realize from the sale of its securities and the $10,914,856 mentioned above. It reports that these notes will be issued to the Federal Water Service Corporation upon a basis whereby said Federal Water Service Corporation will not sell, pledge, hypothecate or otherwise dispose of the same unless concurrently therewith it shall endorse the same and/or guarantee payment thereof. We will authorize the California Water Service Company to issue such notes but only on condition that the notes issued be issued as nonnegotiable notes and that they contain a provision obligating the California Water Service Company to pay both principal and interest of such notes only out of surplus available for distribution as dividends to its holders of common stock or from contributions by or assessments on such common stockholders and that none of said payments will be made from cash realized from the sale of assets or from borrowed money or offset by its reserve for accrued depreciation and that payments when and as made will be charged to surplus. It should be definitely understood that so far as the California Water Service Company is concerned, it expects that company to pay such notes only out of moneys available to pay dividends on common stock. If no such moneys are available the notes must be paid by contributions from Federal Water Service Corporation, the owner of all the common stock of California Water Service Company or its successor or successors in interest.

In regard to the modification of paragraph seven of the order in Decision No. 19467, we believe that the company should be permitted to use any moneys which it may obtain from the sale of securities in excess of the minimum prices fixed by the Commission in such decision to reduce the face amount of the notes which would otherwise be issued and that an amount equivalent to the face value of notes issued be charged to the suspense account and written off as payments are made on the notes.

In regard to the execution of the proposed mortgage and/or deed of trust referred to herein, we feel that there should be eliminated from such proposed mortgage and/or deed of trust and from the bonds issued by the company, the provision which gives certain immunity to incorporators, stockholders, officers and directors of California Water Service Company. Further, we believe that there should be eliminated from the proposed mortgage and/or deed of trust section eight of article III and that subdivsion one of paragraph *b* under section three of article II be modified accordingly.

In lieu of section eight of article III the company should covenant and agree to maintain its properties in good operating condition and make adequate provision for the replacement thereof by proper and

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reasonable credits to its reserve for accrued depreciation. The proposed mortgage and/or deed of trust should contain provisions which will prohibit the trustee from certifying bonds in excess of 75 per cent of the cost or reasonable value, whichever is less, of assets acquired. It should, however, be understood that by authorizing the execution of such mortgage and/or deed of trust the Commission will be under no obligation to authorize the issue of bonds up to 75 per cent of said cost or reasonable value of assets acquired, it being the policy of the Commission, except under extraordinary conditions, to authorize the issue of bonds in amounts not exceeding 60 per cent of such cost or reasonable value.

The Commission has considered the requests of applicant and believes that its Decision No. 19467, dated March 12, 1928, should be modified as indicated in this order; therefore,

It is hereby ordered, as follows:

1. The California Water Service Company may issue and sell at par to Federal Water Service Corporation not exceeding $923,938 face value of its 6 per cent unsecured notes payable not later than February 1, 1933, and in denominations of not less than $100,000, provided that said note or notes contain a provision which obligates the California Water Service Company to pay both the principal of the notes and the interest thereon only out of its earnings available for the declaration and payments of dividends on common stock, or from contributions by assessments on the holder or holders of the company's common stock and that none of said payments will be made from the sale of assets, from money borrowed or moneys offset by the reserve for accrued depreciation.

2. Paragraph seven of the order in Decision No. 19467, dated March 12, 1928, is modified and amended so as to read:

"California Water Service Company shall keep its accounts and records in accordance with the Uniform Classification of Accounts prescribed by this Commission, provided that not more than $10,447,-127.53 may be charged to fixed capital accounts. Any sum which may be paid for the properties here in question in excess of $9,588,811.53 and represented by the note or notes issued under the authority herein granted shall be charged to a suspense account and written off as payments are made on said note or notes, but in no event later than February 1, 1933."

3. California Water Service Company is hereby authorized to execute a mortgage and/ or deed of trust substantially in the same form as the mortgage and/or deed of trust filed in this proceeding, provided that said mortgage and/or deed of trust shall be modified as indicated in this supplemental order and, provided, further, that the authority herein granted to execute such mortgage and/or deed of trust is for

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the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage and/or deed of trust as to such other legal requirements to which said mortgage and/or deed of trust may be subject.

4. The authority herein granted to issue notes will become effective when the California Water Service Company has paid the fee prescribed by the Public Utilities Act, which fee is $448, such fee being in addition to the $3,641 fee paid to the Commission on December 27, 1927.

5. California Water Service Company shall file reports as required by the Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

6. California Water Service Company shall file with the Railroad Commission within thirty days after the execution of the mortgage and/or deed of trust herein authorized, two certified copies of such instrument.

Dated at San Francisco, California, this thirty-first day of March, 1928.

DECISION No. 19541.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY OF CALIFORNIA TO PURCHASE ALL OF CLASS "B" PREFERRED STOCK AND COMMON STOCK OF FEATHER RIVER POWER COMPANY NOW OR HEREAFTER TO BE ISSUED.

Application No. 14531.

Decided April 2, 1928.

SECURITY ISSUES—PURCHASE OF BY ANOTHER UTILITY.—Great Western Power Company of California authorized to purchase all of Class "B" preferred stock and common stock of Feather River Power Company, now issued or to be issued, for the sum of $2,360,000.

SECURITY ISSUES—PURCHASE OF BY ANOTHER UTILITY.—The granting of an application to purchase all the stock of another utility obviously can not commit the Commission to the approval of any particular form of financing such transaction.

W. H. Spaulding, for Applicant.

BY THE COMMISSION.

OPINION.

Great Western Power Company of California asks permission to purchase from the Western Power Corporation all the common stock and all the Class "B" 7 per cent preferred stock of Feather River Power Company now issued or to be issued for the sum of $2,360,000 payable on or before two years from March 21, 1928. A copy of the agreement setting forth the terms and conditions under which the

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applicant intends to acquire the stock is filed in this proceeding as Exhibit "A."

The Feather River Power Company is engaged in the construction of a hydro-electric power project on the North Fork of the Feather River in Plumas County, commonly referred to as the Bucks Creek Project. The company has heretofore been authorized by the Commission to issue $5,500,000 of bonds, $1,000,000 of Class "A" 7 per cent preferred stock, $1,153,900 of Class "B" preferred stock, and $1,000,000 of common stock. In response to a supplemental petition filed in Application No. 14287 the Commission is considering the authorization of the issue of $298,500 of additional Class "B" stock.

The power plant and project of the Feather River Power Company is being constructed under a contract by R. C. Storrie & Co. under the terms of which the Feather River Power Company is obligated to pay the contractor $7,691,889 and in addition $268,583 on account of interest during construction. The evidence in this proceeding, as well as the evidence in Application No. 14287, shows that the actual cost of constructing the plant will exceed the contract price. In Exhibit 1 the cost to the contractor to complete the plant to July 1, 1928, is reported at $8,909,540. If to this is added those expenditures ($364,828) made direct by the Feather River Power Company, one obtains a total of $9,274,368.

It appears that on March 21, 1928, Western Power Corporation agreed to purchase from Karl Brehme all the common stock and all the Class "B" stock of Feather River Power Company issued, or to be issued, for the sum of $2,360,000, payable in general as follows:

$1,085,000.00 on or before July 1, 1928.
505,000.00 from time to time as moneys are needed to pay the cost of completing the plant.
270,000.00 upon the completion of the plant; and
500,000.00 within one year after the completion of the plant.

The agreement between applicant and the Western Power Corporation in turn provides that the $2,360,000 which applicant intends to pay for the stock of the Feather River Power Company mentioned herein, is payable on or before two years from the date of the agreement.

No evidence was submitted in this proceeding to show how the Great Western Power Company of California intends to finance the purchase of the Feather River Power Company stock. Obviously, the granting of this application can not commit the Commission to the approval of any particular form of financing such transaction.

ORDER.

Great Western Power Company of California having asked permission to purchase all the common and all the Class "B" preferred stock

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of the Feather River Power Company now issued, or to be issued, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the granting of this application is in the public interest, and that such application should be granted; therefore,

It is hereby ordered, that the Great Western Power Company of California be and it is hereby authorized to purchase all of the Class "B" preferred stock and all the common stock of the Feather River Power Company issued, or to be issued, at the price and upon the terms and conditions set forth in the agreement attached to the petition in this proceeding and marked Exhibit "A," which agreement the Great Western Power Company of California is hereby authorized to execute.

It is hereby further ordered, that the authority herein granted will become effective when the Great Western Power Company of California has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $1,680.

It is hereby further ordered, that the Great Western Power Company of California shall from time to time, as payments are made for the stock of the Feather River Power Company, file with the Commission a statement showing the amounts paid for such stock.

Dated at San Francisco, California, this second day of April, 1928.

DECISION No. 19543.

IN THE MATTER OF APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE RELOCATION AND RECONSTRUCTION OF THE MAIN TRACK OF ITS CLOVIS BRANCH IN, ALONG AND ACROSS TULARE STREET AND CROSSING SIXTH, SEVENTH, EIGHTH AND NINTH STREETS, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA.

Application No. 14200.

Decided April 2, 1928.

CROSSINGS—GRADE CROSSINGS.—Southern Pacific Company authorized to construct main track of Clovis branch across several streets in the city of Fresno.

CROSSINGS—IN GENERAL—NECESSITY OF FRANCHISE.—While it is customary before acting upon applications to construct tracks across city streets or roads, to require a franchise from the political subdivision having jurisdiction, this requirement being merely as evidence of consent of the local governing body to the proposed construction, evidence of such consent having been introduced otherwise, for the purposes of the Commission, a franchise from the city is not necessary.

CROSSINGS—IN GENERAL—NECESSITY FOR FRANCHISE.—Although there is a possibility of a superior court action, a railroad having been constructed without a franchise from a county under the general authority granted in the Civil Code, the question whether or not a railroad should be operated in the vicinity is not within the scope of a proceeding before the Commission concerning only crossings with public thoroughfares, and determination of such an application will not be withheld until the outcome of such possible suit.

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H. W. Hobbs, for Applicant.
L. A. Butts, City Attorney, for the City of Fresno.
Theodore M. Stuart, for the East Fresno Citizens Association.

BY THE COMMISSION.

OPINION.

This is an application of Southern Pacific Company for permission to relocate a portion of its Clovis Branch, such relocation involving the crossings of Tulare street, Sixth, Seventh, Eighth and Ninth streets, all in the city of Fresno. A public hearing was held by Examiner Gannon at Fresno on February 29, 1928.

At the present time the Clovis Branch, between a point near Sixth street and a point in the vicinity of Ninth street, is constructed along the center line of Tulare street, this having been the original line, which was built at a time when Tulare street was an unimportant county road outside the city limits. The grade of the track is some two or three feet above the surface of the street and because of this obstruction, Tulare street is traveled only on the northerly half. It is proposed to reconstruct the track along the southerly side of Tulare street, the center line of the track to be located eleven feet from the southerly property line. Within the limits of the proposed relocation of this track, Tulare street is intersected at right angles by Sixth, Seventh, Eighth and Ninth streets and to carry out this improvement it will be necessary to relocate the grade crossings along the track.

No franchise has been secured from the city but the work is undertaken at the request of the city council. A representative of the city appeared at the hearing and offered no objection to the granting of this application, this representative stating that the city desired that Southern Pacific Company either lower its track to the level of the street in the existing location or remove it to the side of the street, as the city wanted to widen the roadway in Tulare street.

The East Fresno Citizens Association, through its attorney, protested the granting of the application but the objection of this association is, in general, a desire to remove the track entirely from Tulare street, it being their contention that the presence of any railroad track at or in this vicinity is unnecessary and is a detriment to adjacent property. It was stated that at the present time there is a possibility of a suit in the superior court to determine whether or not Southern Pacific Company has any right whatever to maintain a track in this street, the track having been constructed without a franchise from the county under the general authority granted in the Civil Code and protestant requests that this Commission withhold determination of this application until the outcome of this suit is learned.

The proceeding now before the Commission concerns only the crossings with public thoroughfares and the question as to whether or not a railroad should be operated in this vicinity is not within the scope of

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this decision. It is customary for the Commission, before acting upon applications to construct tracks across city streets or roads, to require a franchise from the political subdivision having jurisdiction over the street or road concerned, but the purpose of this franchise requirement being merely as evidence of the consent of the local governing body to the proposed construction, and evidence of such consent having been introduced otherwise in this proceeding, we do not believe that, for the purposes of this Commission, a franchise from the city is necessary.

The removal of the track from the center of the street to a location near the southerly property line will, to a certain extent, increase the hazard to vehicles approaching the crossing on the intersecting streets from the south. There are buildings, trees and fences located along or in close proximity to the southerly property line of Tulare street and with the track but eleven feet from this property line, it is possible that a vehicle would be foul of the track before the driver would have an opportunity to see a train approaching from either direction, while in its present location, thirty-three feet from the property line, drivers of vehicles have a better opportunity to look up and down the track before driving on the crossing.

Applicant submitted exhibits showing the amount of vehicular traffic over the several crossings, a summary of these exhibits being as follows:

Traffic during 14-hour period—6 a.m. to 8 p.m.

	Pedestrians and bicycles	*Automobiles and trucks*	*Miscellaneous*
Sixth street	283	435	4
Seventh street	236	215	1
Eighth street	259	159	2
Tulare street	59	1,680	14

NOTE.—Ninth street and Tulare street traffic use common crossing with track in present location.

Under the present schedules, the applicant operates two trains each way daily over the crossings, the speed of these trains being restricted to eight miles per hour. In view of the fact that the view will be impaired at the crossings of Sixth, Seventh, Eighth and Ninth streets, and that the volume of traffic which will have occasion to use Tulare street is substantial, we believe that special protection should be provided at each of the five crossings.

It appears that Tulare street is an arterial thoroughfare in the city of Fresno and at the hearing the representative of the city stated that the city would be willing to erect arterial stop signs at the intersections of Sixth, Seventh, Eighth and Ninth streets with Tulare street. If this is done and the regulation enforced, it is believed that sufficient special protection will have been afforded at these four crossings. The crossing with Tulare street should, however, be protected with an automatic flagman.

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ORDER.

Southern Pacific Company, a corporation, filed the above entitled application with this Commission, asking for authority to construct a main branch line track at grade across Tulare, Sixth, Seventh, Eighth and Ninth streets, in the city of Fresno, county of Fresno, State of California, as hereinafter set forth. A public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision; therefore,

It is hereby ordered, that permission and authority be and it is hereby granted to Southern Pacific Company to construct a main branch line track at grade across Tulare, Sixth, Seventh, Eighth and Ninth streets in the city of Fresno, county of Fresno, State of California, at the locations hereinafter particularly described and as shown by the map (Exhibit 2) attached to the application.

Description of Crossings.

Commencing at the intersection of the southerly property line of Tulare street and the westerly property line of Sixth street, city of Fresno, county of Fresno, State of California, as shown on that certain map entitled "Alta Vista Tract," filed for record on page 5, volume 7, record of surveys on November 14, 1911, Fresno County records.

Thence along the westerly property line of Sixth street southerly a distance of 6.81 feet to point of beginning of the center line of proposed main track to be described. Thence along a curve to the right of 1432.47 feet radius, and tangent to said curve at the point of beginning bears north one degree forty-four and one-fourth minutes east, an arc distance of 214.8 feet to point of end of curve. Thence south eighty-nine degrees forty and one-fourth minutes east, a distance of 1192.9 feet to point of beginning of curve. Thence on a curve to the left of 5729.60 feet radius, an arc distance of 30.0 feet to point of compound curve. Thence along a curve to the left of 2864.82 feet radius, the tangent to which bears south eighty-nine degrees fifty-eight and one-fourth minutes east, an arc distance of 30.0 feet to point of compound curve. Thence along a curve to the left of 1909.91 feet radius, the tangent to which bears north eighty-nine degrees twenty-five and three-fourths minutes east, an arc distance of 30.0 feet to point of compound curve. Thence along a curve to the left of 1432.47 feet radius. The tangent to which bears north eighty-eight degrees thirty-one and three-fourths minutes east, an arc distance of 30.0 feet to point of compound curve. Thence along a curve to the left of 1146.01 feet radius, the tangent to which bears north eighty-seven degrees nineteen and three-fourths minutes east, an arc distance of 30.0 feet to point of compound curve. Thence on a curve to the left of 955.04 feet radius the tangent to which bears north eighty-five degrees forty-nine and three-fourths minutes east, an arc distance of 286.5 feet to end of center line of proposed main track in Tulare street.

Said last mentioned point being the intersection of the center line of the proposed main track with the northerly property line of Tulare street at a distance of 229.6 feet, more or less, easterly along the northerly property line of Tulare street from the intersection of the northerly property line of Tulare street and the easterly property line of Ninth street produced northerly.

The above crossings shall be identified as follows:

Tulare street	Crossing No. BS-208.8
Sixth street	Crossing No. BS-208.4
Seventh street	Crossing No. BS-208.5
Eighth street	Crossing No. BS-208.6
Ninth street	Crossing No. BS-208.7

Said crossings to be constructed subject to the following conditions, namely:

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(1) The entire expense of constructing the crossings, together with the cost of their maintenance thereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Said crossings shall be constructed equal or superior to type shown as standard No. 3, in General Order No. 72, of this Commission, and shall be constructed without superelevation and of a width to conform to those portions of said streets now graded, with the tops of rails flush with the roadway and with grades of approach not exceeding two per cent; shall be protected by suitable crossing signs and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(3) An automatic flagman shall be installed and maintained for the protection of the crossing of Tulare street. Said automatic flagman shall be of a type designated as Standard No. 3 in General Order No. 75 of this Commission. The cost of installing and maintaining said flagman shall be borne by applicant.

(4) Arterial stop signs shall be erected on the southerly side of the crossings of Sixth, Seventh, Eighth and Ninth streets.

(5) Applicant shall, within thirty days thereafter, notify this Commission, in writing, of the completion of the installation of said crossings.

(6) If said crossings shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(7) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this second day of April, 1928.

DECISION No. 19545.

IN THE MATTER OF THE APPLICATION OF LINDSAY HOME TELEPHONE AND TELEGRAPH COMPANY FOR ORDER AUTHORIZING ISSUE OF STOCK.

Application No. 14439.

Decided April 2, 1928.

SECURITY ISSUES—STOCK.—Lindsay Home Telephone and Telegraph Company authorized to issue $25,000 of common capital stock at par in exchange for

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outstanding stock, and to issue and sell $24,000 of common capital stock at par to pay outstanding notes and other indebtedness.

James R. McBride, for Applicant.

BY THE COMMISSION.

OPINION.

In the above entitled matter Lindsay Home Telephone and Telegraph Company asks permission to issue 550 shares of its capital stock of the par value of $100 each (total par value $55,000) as follows:

1. To deliver $25,000 of such stock, consisting of 250 shares of the par value of $100 each, at par, in exchange for the $25,000 of stock now outstanding, consisting of 25,000 shares of the par value of $1 each.

2. To sell $30,000 of such stock, at such price as the Commission may fix, for the purpose of paying notes and of reimbursing its treasury because of income expended for additions and betterments.

Lindsay Home Telephone and Telegraph Company is engaged in the business of owning, maintaining and operating a public utility telephone business in and about the city of Lindsay, Tulare County, serving approximately 925 subscribers.

It reports its assets and liabilities as of December 31, 1927, as follows:

Assets.

Plant and equipment	$109,011 23
Cash	423 94
Accounts receivable	848 32
Other debit accounts	214 50
Total	$110,497 99

Liabilities.

Capital stock	$25,000 00
Funded debt	9,200 00
Notes payable	23,200 00
Accounts payable	2,197 60
Accruals	430 93
Depreciation reserve	43,159 11
Surplus	7,310 35
Total	$110,497 99

The revenues and expenses for the last two calendar years have been reported as follows:

Item	*1926*	*1927*
Operating revenue	$21,129 75	$21,471 94
Operating expenses	17,302 85	18,341 29
Net operating revenue	$3,826 90	$3,130 65
Miscellaneous income	499 32	1,128 47
Gross income	$4,326 22	$4,259 12
Less: Interest, etc.	2,187 07	2,293 47
Balance	$2,139 15	$1,965 65

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It appears that the company was organized with an authorized capital stock of $25,000, all common, divided into 25,000 shares of the par value of $1 each, but that recently the articles of incorporation have been modified so as to increase the authorized capital stock to $100,000, all common, divided into 1000 shares of the par value of $100 each.

The company proposes to issue $25,000 par value of stock in exchange for the $25,000 of stock outstanding, and to sell, of the increased amount, $30,000 at such price as the Commission may fix to pay the outstanding note indebtedness of $23,200 and to reimburse its treasury. It sets forth, in this connection, that during the four years, 1923 to 1926, inclusive, it expended for capital purposes, the sum of $30,540.31, as shown in some detail in its Exhibit "3," and it alleges that the moneys obtained through the issue of the notes were used to pay in part the cost of its capital expenditures. In addition it estimates that approximately one-half of its accounts payable of $2,197.60 represent amounts due for capital additions.

At the hearing applicant suggested a selling price for its stock of 80, which would net it $24,000 for the proposed additional $30,000 stock issue. However, in view of the record in this proceeding we do not believe that we are authorized in permitting the sale of the stock at the price suggested and in our opinion applicant should receive the full par value for its stock.

We do not believe that sufficient showing has been made in support of the request to use stock proceeds to reimburse its treasury and the order herein accordingly will authorize the issue and sale at par, of $24,000 of stock and the use of the proceeds to pay indebtedness.

ORDER.

Lindsay Home Telephone and Telegraph Company having applied to the Railroad Commission for permission to issue $55,000 of stock, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of $49,000 of stock is reasonably required for the purposes specified herein, which purposes are not in whole or in part reasonably chargeable to operating expense or to income, and that the application in so far as it involves the issue of the remaining $6,000 of stock, should be dismissed without prejudice.

It is hereby ordered, that Lindsay Home Telephone and Telegraph Company be and it hereby is authorized to issue 250 shares ($25,000 total par value) of its common capital stock of the par value of $100 each in exchange for the 25,000 shares ($25,000 par value) of common stock now outstanding of the par value of $1 each, such exchange to be on a basis of one share of the new stock of the par value of $100 a

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share, for one hundred shares of the stock now outstanding of the par value of $1 a share.

It is hereby further ordered, that Lindsay Home Telephone and Telegraph Company be and it hereby is authorized to issue and sell, at not less than $100 a share, 240 shares of its common capital stock ($24,000 total par value) of the par value of $100 a share, and to use the proceeds to pay the outstanding notes of $23,200 and other indebtedness incurred in making betterments, additions, improvements and extensions.

It is hereby further ordered, that the application in so far as it involves the issue of $6,000 of stock be and it hereby is dismissed without prejudice.

The authority herein granted is subject to the following conditions:

1. Applicant shall keep such record of the issue, sale and delivery of the stock herein authorized, and of the disposition of the proceeds as will enable it to file, on or about the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

2. The authority herein granted shall become effective ten days from the date hereof. Under such authority no stock may be issued after December 31, 1928.

Dated at San Francisco, California, this second day of April, 1928.

DECISION No. 19546.

IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN HOME TELEPHONE COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF FORTY-ONE THOUSAND SIX HUNDRED DOLLARS PAR VALUE OF ITS FIRST AND UNIFIED GOLD BONDS.

Application No. 14446.

Decided April 2, 1928.

SECURITY ISSUES—BONDS.—Southwestern Home Telephone Company authorized to issue and sell at not less than 96 and accrued interest, $41,600 of its first and unified mortgage 6 per cent gold bonds due October 1, 1954, to reimburse treasury.

Ernest Irwin, for Applicant.

BY THE COMMISSION.

OPINION.

Southwestern Home Telephone Company asks permission to issue and sell at not less than 95 per cent of their face value and accrued interest $41,600 of its first and unified 6 per cent gold bonds due October 1, 1954.

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Applicant is engaged in the business of rendering telephone service in and adjacent to the cities and towns of Redlands, Banning, Beaumont, Elsinore, Hemet, San Jacinto, Murrietta, Perris, Temecula and Palm Springs.

As of January 1, 1928, the company reports $84,234.50 of stock and $398,000 of bonds actually outstanding. As of the same date it reports its reserve for accrued depreciation at $102,448.28 and its surplus at $57,591.77. The moneys represented by both the reserve and surplus have been invested in the business and properties of the company. During the past several years it has invested its surplus earnings in it properties, rather than pay dividends.

Applicant in its Exhibit "B" reports that from January 1, 1927, to December 31, 1927, it expended for additions and betterments $71,455.65. From this it deducts $8,204.44 representing plant removals, leaving net construction expenditures of $63,251.21. The expenditures include $37,207.88 incurred in the construction of the company's Palm Springs exchange and $10,298.91 for the installation of a new long distance toll board at Redlands. The other expenditures are such as the company is called upon from time to time to make, in order to give added telephone service and improve service to existing subscribers.

We have considered the testimony submitted in this proceeding and are of the opinion that the company should be permitted to issue $41,600 of its first and unified mortgage gold bonds, but that such bonds should not be sold by the company for less than 96 per cent of their face value and accrued interest.

ORDER.

Southwestern Home Telephone Company having applied to the Railroad Commission for permission to issue $41,600 of its first and unified mortgage 6 per cent gold bonds due October 1, 1954, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required by the company and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted as herein provided; therefore,

It is hereby ordered, that Southwestern Home Telephone Company be and it is hereby authorized to issue and sell at not less than 96 per cent of their face value and accrued interest, $41,600 of its first and unified mortgage 6 per cent gold bonds due October 1, 1954, and use the proceeds to reimburse its treasury on account of income expended for the construction of the additions and betterments described in Exhibit "B."

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It is hereby further ordered, that the authority herein granted will become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $42.

It is hereby further ordered, that applicant shall keep such record of the issue of the bonds and the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this second day of April, 1928.

DECISION NO. 19547.

IN THE MATTER OF THE APPLICATION OF RIO VISTA LIGHTERAGE COMPANY, A COPARTNERSHIP, AND RIO VISTA LIGHTERAGE COMPANY, INC., A CORPORATION, FOR PERMISSION TO TRANSFER THE WHOLE OF THE PROPERTY OF RIO VISTA LIGHTERAGE COMPANY, A COPARTNERSHIP, TO RIO VISTA LIGHTERAGE COMPANY, INC., A CORPORATION, IN EXCHANGE FOR THE ENTIRE CAPITAL STOCK OF RIO VISTA LIGHTERAGE COMPANY, INC., A CORPORATION, AND TO EXECUTE CHATTEL MORTGAGE.

Application No. 14454.

Decided April 2, 1928.

TRANSFER—STOCK—NOTE.—Rio Vista Lighterage Company authorized to transfer its properties to Rio Vista Lighterage Company, Inc., and the latter to issue not exceeding $72,400 of common stock in payment therefor, and note of $25,000.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION.—The Commission will not authorize the issuance of $100,000 of stock in payment for properties and assets in which the net investment, after deducting estimated accrued depreciation and liabilities to be assumed by the purchaser, is reported at $72,488.75.

Kenneth I. Jones, for Applicants.

BY THE COMMISSION.

OPINION.

In this application John Barr, Frank Rossi, Minnie Christensen and K. I. Jones, copartners doing business under the firm name and style of Rio Vista Lighterage Company, ask permission to transfer their operative rights and properties, subject to outstanding indebtedness, to Rio Vista Lighterage Company, Inc., a corporation.

Rio Vista Lighterage Company, Inc., asks permission to issue $100,000 of stock in part payment for such rights and properties and to execute a chattel mortgage on all its equipment to secure the payment of a promissory note in the principal amount of $25,000, payable one year after date with interest at the rate of 6 per cent per annum.

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for the purpose of paying part of the liabilities to be assumed in acquiring the rights and properties of the copartnership.

It appears that the copartnership is engaged in the business of towing and of transporting freight by vessels on the inland waters of the state. The tariffs heretofore filed with the Commission quote rates between Stockton, Sacramento, San Francisco and intermediate points, and landings on the San Joaquin River below Streckers, the Mokelumne, Old, Middle and Sacramento rivers and tributaries below Sacramento and also between San Francisco, Sacramento, Stockton, Port Costa, Vallejo and Petaluma and upper Sacramento River points.

The assets and liabilities of the copartnership, as of December 31, 1927, are reported as follows:

Assets and Other Debit Balances.

Property and equipment	$127,877 40
Cash	2,062 15
Notes receivable	160 00
Accounts receivable	18,699 11
Materials and supplies	1,055 00
Prepayments	5,411 18
Other debit accounts	5,320 00
Total	$160,584 84

Liabilities and Other Credit Balances.

Notes payable	$24,737 96
Accounts payable	32,704 21
Accruals	190 19
Advances to partners	1,074 70
Total liabilities	$58,707 06
Reserve for depreciation	29,389 03
Proprietorship	72,488 75
Total	$160,584 84

It is reported that the members of the copartnership have concluded that the business can be operated better by a corporation and for that reason have caused the organization, on or about December 31, 1927, of Rio Vista Lighterage Company, Inc., one of the applicants herein, for the express purpose of having it take over their properties and business, including current assets and other debit balances, and thereafter of conducting the operations. In consideration it is proposed that the corporation assume the payment of the liabilities and in addition issue to the copartners $100,000 of its capital stock.

In Exhibit "A," the first costs and present values, after deducting estimated depreciation of the line equipment, which constitutes substantially all of the property and equipment, are reported as follows:

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Vessel	*First cost*	*Present values*
Tow boats—R.V.L. No. 1	$20,600 00	$17,500 00
R.V.L. No. 2	20,000 00	20,000 00
Amalgamated Sugar No. 1	10,000 00	6,000 00
Amalgamated Sugar No. 2	11,705 00	7,000 00
R.V.L. No. 5	1,800 00	1,000 00
Freight boats—Swastika (new)	27,500 00	27,500 00
Barges—No. 1	8,500 00	5,000 00
No. 3	12,000 00	6,000 00
No. 4	7,500 00	4,000 00
No. 5 (rebuilt)	6,000 00	5,000 00
Totals	$125,605 00	$99,000 00

The records of the Commission show that the *Swastika* formerly was operated by Dealers Transportation Company, a corporation, which, by Decision No. 19388, dated February 20, 1928, in Application No. 14275 was authorized to transfer it for $27,500 to C. F. Christensen. This transfer, it now appears, was not completed and the Commission has been asked to modify Decision No. 19388 and to authorize the transfer of the *Swastika* for $27,500 to Rio Vista Lighterage Company, Inc. Of the purchase price $10,000 will be paid in cash and about $5,000 through the assumption of outstanding indebtedness and the balance will be represented by an open account indebtedness of the corporation bearing interest at 6 per cent. A supplemental order in Application No. 14275, granting this request accordingly will be made.

In reviewing this application it appears to us that we are asked to authorize the issue of $100,000 of stock in payment for properties and assets in which, according to the foregoing balance sheet, the net investment, after deducting estimated accrued depreciation and liabilities to be assumed by the purchaser, is reported at $72,488.75. We do not believe that we are justified in authorizing the issue of stock in excess of this amount and accordingly the order herein will permit the issue of $72,400 par value of stock.

The barges now owned and operated by the copartnership are encumbered with a chattel mortgage to Bank of Rio Vista securing the payment of a 6 per cent note for $15,000 due July 1, 1927. Upon acquiring the barges and other equipment of the copartnership the new corporation proposes to execute a mortgage to Bank of Rio Vista on all the property to be acquired to secure the payment of a one-year 6 per cent note for $25,000 and to use the moneys to be received on the note to discharge the $15,000 now due Bank of Rio Vista under the present mortgage and to make the $10,000 cash payment for the *Swastika*.

ORDER.

Application having been made to the Railroad Commission for an order authorizing the transfer of properties, the execution of a mort-

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gage and the issue of $100,000 of stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the transfer of properties and the execution of the mortgage should be authorized and that the issue of $72,400 of stock and a $25,000 note is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income and that the issue of $27,600 of stock should be denied;

It is hereby ordered, that John Barr, Frank Rossi, Minnie Christensen and K. I. Jones, copartners doing business under the firm name and style of Rio Vista Lighterage Company be and they hereby are authorized to transfer to Rio Vista Lighterage Company, Inc., a corporation, all of their operative rights, properties and assets, referred to in the foregoing opinion, subject to the outstanding liabilities of approximately $59,000.

It is hereby further ordered, that Rio Vista Lighterage Company, Inc., a corporation, be and it hereby is authorized in acquiring such operative rights, properties and assets, to assume the payment of the outstanding indebtedness of approximately $59,000 and to issue not exceeding $72,400 of its common capital stock.

It is hereby further ordered, that Rio Vista Lighterage Company, Inc., be and it hereby is authorized to execute a chattel mortgage substantially in the same form as that filed in this proceeding as Exhibit "E," and to issue a one-year 6 per cent promissory note for $25,000, secured thereby, for the purpose of discharging the $15,000 note in favor of Bank of Rio Vista and of making the $10,000 cash payment for the *Swastika.*

The authority herein granted is subject to the following conditions:

1. Applicants John Barr, Frank Rossi, Minnie Christensen and K. I. Jones shall unite immediately with applicant Rio Vista Lighterage Company, Inc., in common supplement to the tariffs on file with the Commission, applicants John Barr, Frank Rossi, Minnie Christensen and K. I. Jones on the one hand withdrawing and applicant Rio Vista Lighterage Company, Inc., on the other hand accepting and establishing such tariffs and all effective supplements thereto.

2. The consideration to be paid for the properties herein authorized to be transferred shall never be urged before this Commission or any other public body as a measure of value of said properties for any purpose other than this transfer.

3. Rio Vista Lighterage Company, Inc., shall keep such record of the issue of the stock and note herein authorized to be issued and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by

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the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted will become effective when Rio Vista Lighterage Company, Inc. has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

5. The authority herein granted to execute a mortgage is for the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

6. Rio Vista Lighterage Company, Inc. shall file a certified copy of the mortgage within thirty days after its execution.

It is hereby further ordered, that the application in so far as it involves the issue of $27,600 of stock be and it hereby is denied without prejudice.

Dated at San Francisco, California, this second day of April, 1928.

DECISION No. 19548.

IN THE MATTER OF THE APPLICATION OF WEST SIDE TRANSIT COMPANY, A CORPORATION, FOR PERMISSION TO ISSUE ONE THOUSAND DOLLARS PAR VALUE OF ITS COMMON CAPITAL STOCK.

Application No. 14457.

Decided April 2, 1928.

SECURITY ISSUES—STOCK.—West Side Transit Company authorized to issue $1,000 of its common capital stock to N. M. Todd.

N. M. Todd, for Applicant.

BY THE COMMISSION.

OPINION AND ORDER.

West Side Transit Company, a public utility, asks permission to issue $1,000 par value of its common capital stock for the purposes hereinafter stated.

It is of record that N. M. Todd paid to applicant $1,000 and received from applicant two stock certificates representing $1,000 par value of stock. The certificates were issued under authority granted by the Commissioner of Corporations. Upon being informed by us that the issue of the stock should be authorized by the Railroad Commission, applicant filed its application in which it requests permisson to issue $1,000 par value of stock to N. M. Todd. He has agreed to return to applicant for cancellation the two certificates issued to him.

The testimony shows that applicant used the $1,000 obtained from N. M. Todd to pay expenses incident to securing permission from this Commission to extend its operations.

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A public hearing having been held in the above entitled matter before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by the issue of $1,000 of stock is reasonably required by applicant and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that West Side Transit Company be and it is hereby authorized to issue to N. M. Todd, $1,000 par value of its common capital stock, provided that he return to applicant for cancellation the two stock certificates heretofore issued to said N. M. Todd.

It is hereby further ordered, that the authority herein granted will become effective upon the date hereof and that West Side Transit Company shall file with the Commission a statement showing the date on which it issued the stock herein authorized and the number of the certificate or certificates issued to represent such stock, and a report showing that it has received and canceled the stock certificates heretofore issued to said N. M. Todd.

Dated at San Francisco, California, this second day of April, 1928.

DECISION No. 19549.

IN THE MATTER OF THE APPLICATION OF AUTO TRANSIT COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING IT TO ISSUE NOTES AND TO MORTGAGE CERTAIN OF ITS PROPERTY TO SECURE THE SAME.

Application No. 14465.

Decided April 2, 1928.

SECURITY ISSUES—NOTE—MORTGAGE.—Auto Transit Company authorized to issue its promissory note in the amount of $10,000 to pay outstanding indebtedness and to execute a chattel mortgage.

Sanborn and Roehl and De Lancey C. Smith, by *H. H. Sanborn,* for Applicant.

BY THE COMMISSION.

OPINION.

Auto Transit Company, a corporation, engaged in operating auto stages for the transportation of passengers and baggage between San Francisco and Monterey and Salinas and certain intermediate points, has applied to the Railroad Commission for an order authorizing it to execute a chattel mortgage on certain of its property and to issue a promissory note, secured thereby, in the principal amount of $10,000, payable in monthly installments of $600 with interest at the rate of 6 per cent per annum.

The company proposes to use the proceeds to be received through the issue of the note to pay outstanding indebtedness amounting to $8,630 and to finance in part the cost of a new stage body. It reports, in this

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connection, that as of February 1, 1928, it was indebted to Coast Counties Gas and Electric Company, under a conditional sales contract, in the amount of $4,775, payable in monthly installments of $862.50 with interest at 8 per cent; to United Bank and Trust Company in the amount of $3,000, evidenced by a short term 6 per cent note; and to Fisher Motor Body Company in the amount of $855, payable in monthly installments of $200, with interest at 8 per cent. It appears that the indebtedness in favor of Coast Counties Gas and Electric Company represents amounts due on the purchase of certain equipment used in applicant's operations in Santa Cruz and that the note to United Bank and Trust Company was issued to obtain funds to pay one of the installments under the above conditional sales contract, to pay in part the cost of a new stage body and for current corporate purposes. The obligation of $855 is the balance due on the purchase price of $2,750 for a stage body.

The indebtedness to be paid aggregates $8,630. The company proposes to use the remaining $1,370 it will receive from the proposed note issue to pay in part the purchase price of $2,750 for another stage body it intends to acquire for a chassis it now owns.

Arrangements have been made to execute the new chattel mortgage and to issue the $10,000 note to United Bank and Trust Company, payment to be made, as indicated above, in monthly installments of $600 with interest at the rate of 6 per cent. The proposed mortgage will be a lien on eleven of the stages now used by applicant, which, according to the application, cost $68,074.34 and have an estimated net value, after deducting depreciation, of $34,072.31. The proposed form of mortgage appears to be satisfactory.

ORDER.

Auto Transit Company having applied to the Railroad Commission for permission to execute a mortgage and to issue a note, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the application should be granted, as herein provided;

It is hereby ordered, that Auto Transit Company be and it hereby is authorized to execute a mortgage substantially in the same form as that filed with the application herein as Exhibit "E" and to issue its promissory note, secured thereby, in the principal amount of $10,000, payable in monthly installments of $600, with interest on deferred payments at the rate of 6 per cent per annum, and to use the proceeds to be received through the issue of such note to pay the outstanding indebtedness of $8,630 referred to in the foregoing opinion and to finance in part the cost of a new stage body.

The authority herein granted is subject to the following conditions:

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1. The authority herein granted to execute a mortgage is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

2. Applicant shall keep such record of the issue of the note herein authorized and of the disposition of the proceeds as will enable it to file, within thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted will become effective when applicant has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

Dated at San Francisco, California this second day of April, 1928.

DECISION No. 19551.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, FOR AUTHORITY TO ISSUE AND SELL FOUR HUNDRED THOUSAND (400,000) SHARES OF ITS PREFERRED STOCK, SERIES "C," FIVE AND ONE-HALF PER CENT.

Application No. 14536.

Decided April 2, 1928.

SECURITY ISSUES—STOCK.—Southern California Edison Company authorized to issue and sell at not less than $24.50 per share 400,000 shares of its preferred stock, Series "C," 5½ per cent, of the aggregate par value of ten million dollars.

Roy V. Reppy and *Gail C. Larkin*, for Applicant.

BY THE COMMISSION.

OPINION.

In this application Southern California Edison Company asks permission to issue and sell, at not less than $24 a share, 400,000 shares of its series "C" 5½ per cent preferred stock of the par value of $25 a share and of the aggregate par value of $10,000,000. It further desires to use not exceeding $1 per share of stock sold to pay commissions and selling expenses and to consolidate the remaining proceeds with the proceeds received or to be received from the sale of stock heretofore authorized to be issued and sold, and to use the consolidated proceeds to finance the cost of extensions, betterments and additions to its plants and properties.

The application shows that recently the company has amended its articles of incorporation so as to reclassify its authorized capital stock, which now consists of a total authorized amount of $250,000,000, divided into 10,000,000 shares of the par value of $25 each, of which 4,000,000 are common shares and 6,000,000 shares of the par value of

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$150,000,000 are preferred shares. The stock of each class outstanding as of February 29, 1928, and the amounts of each class as now authorized are reported as follows:

Class of stock	*Authorized*	*Outstanding*
Original preferred	$4,000,000 00	$4,000,000 00
Preferred, Series "A"—7 per cent	30,000,000 00	25,886,800 00
Preferred, Series "B"—6 per cent	50,000,000 00	47,876,875 00
Preferred, Series "C"—5.5 per cent	45,000,000 00	15,046,725 00
Preferred, Series "D"—5 per cent	21,000,000 00	----------
Common	100,000,000 00	49,368,947 00
Totals	$250,000,000 00	$142,179,347 00

In addition, there is reported as of the same date preferred stock subscriptions of $4,835,700 and common stock subscriptions of $1,939,050.

In now asking permission to issue additional stock the company reports the necessity of obtaining funds to finance in part its 1928 construction expenditures. In this connection it reports in its Exhibit No. 7, total expenditures for new construction as of February 29, 1928, against which no securities have been issued, of $2,794,671.71 determined as follows:

Total expenditures for new construction as of September 30, 1927, against which no securities had been issued, as shown in Exhibit No. 5 in Application No. 14187		$754,171 31
Monthly expenditures for construction—		
October, 1927	$2,108,876 26	
November, 1927	2,857,973 85	
December, 1927	2,828,153 08	
January, 1928	2,147,695 10	
February, 1928	2,747,802 11	
		12,690,500 40
Total		$13,444,671 71
Less proceeds used from sale of stock heretofore authorized		10,650,000 00
Balance		$2,794,671 71

In the preceding application, No. 14187, the company filed as Exhibit No. 6, a copy of its 1928 construction budget showing estimated expenditures for the year of $32,091,000. As shown in the foregoing tabulation, expenditures for the first two months of the year aggregated $4,895,497.21, leaving a balance of about $27,196,000 for the remaining ten months.

To meet in part the uncapitalized construction expenditures as of February 29, 1928, and the estimated expenditures for the balance of the year, applicant reports due on February 29, 1928, on account of the unpaid balances on stock subscriptions, the sum of $4,251,359.58, and it appears that of the stock heretofore authorized to be issued and sold, there remains unsold stock of the total par value of about

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$8,500,000, so that apparently the moneys which the company will collect from stock subscribers or which it may realize from the sale of stock heretofore authorized to be issued and sold, but not yet sold, will not be sufficient to finance the total expenditures referred to herein. Some of applicant's stock has been sold on an installment payment basis, with the result that all of the $4,251,359.58 due on stock subscriptions will not be collected during the current year. The issue and sale of the additional $10,000,000 of stock seems necessary and the order following accordingly will permit such issue and sale.

ORDER.

Southern California Edison Company having applied to the Railroad Commission for permission to issue and sell $10,000,000 of stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required for the purposes specified herein and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Southern California Edison Company be and it hereby is authorized to issue and sell on or before December 31, 1928, at not less than $24.50 per share, 400,000 shares of its preferred stock, Series "C" 5½ per cent, of the aggregate par value of $10,000,000.

It is hereby further ordered, that Southern California Edison Company be and it hereby is authorized to use an amount of the proceeds not exceeding seventy-five cents per share of stock sold to pay commissions and expenses incident to the sale of the stock, and to consolidate the remaining proceeds and such portion of the seventy-five cents not needed for commissions and expenses incident to the sale of stock with the proceeds received or to be received from the sale of stock heretofore authorized to be issued, and to use such consolidated proceeds to finance in part the cost of extensions, betterments and additions to its properties, as indicated in the company's annual budget for the year 1928, a copy of which has heretofore been filed with the Commission as Exhibit No. 6 in Application No. 14107, provided that only such cost of the extensions, betterments and additions as is properly chargeable to fixed capital accounts under the uniform system of accounts prescribed by this Commission, may be financed with such proceeds.

It is hereby further ordered, that the authority herein granted shall become effective upon the date hereof, and further, that applicant shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report,

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as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

Dated at San Francisco, California, this second day of April, 1928.

DECISION No. 19562.

IN THE MATTER OF THE APPLICATION OF THE WILLITS WATER COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCKS.

Application No. 14403.

IN THE MATTER OF THE APPLICATION OF CENTRAL MENDOCINO COUNTY POWER COMPANY, A CORPORATION, AND OF EDWARD MORRIS FOR AUTHORITY TO SELL THE WATER SYSTEMS AND PROPERTIES OF SAID CENTRAL MENDOCINO COUNTY POWER COMPANY AND FOR AMY REQUA LONG TO BUY SAID SYSTEMS AND PROPERTIES.

Application No. 14404.

Decided April 2, 1928.

TRANSFER.—Central Mendocino County Power Company and Amy Requa Long authorized to transfer water system to Willits Water Company.

SECURITY ISSUES—FACTORS AFFECTING ISSUANCE.—An application for permission to issue stock against properties should be filed after the ultimate vendee has actually acquired title thereto and a utility will not be authorized to issue its stock as payments are made under an agreement providing for ten annual payments; title not to be conveyed until full purchase price is paid.

ACCOUNTING—ACCOUNTS TO WHICH PARTICULAR ITEMS CHARGEABLE.—Upon the transfer of property for an amount less than the cost thereof, it is better accounting practice if such difference as may exist between the historical cost of the properties and the purchase price be credited to a subaccount under reserve for accrued depreciation, rather than to surplus account.

Orrick, Palmer and Dahlquist, by *Hillyer Brown*, for Central Mendocino County Power Company.
Edward Morris, for Willits Water Company.

BY THE COMMISSION.

OPINION.

In Application No. 14404 the Railroad Commission is asked to make an order authorizing Central Mendocino County Power Company to sell its public utility water system to Amy Requa Long, in accordance with the terms and conditions of an agreement dated July 11, 1927, a copy of which is filed as Exhibit "B."

In Application No. 14403, as amended, the Commission is asked to authorize Willits Water Company to issue $165,000 of stock.

It appears that Central Mendocino County Power Company for several years has been engaged in the business of furnishing and selling electricity for light and power and of distributing water in and about Willits, Mendocino County. It seems that those in control of the affairs of the corporation desire to dispose of the water business and properties and to that end have made arrangements to sell them to Amy Requa Long and Edward Morris by the agreement dated July 11.

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1927. Subsequently Edward Morris assigned all of his right, title and interest in and to the agreement to Amy Requa Long.

It appears that Amy Requa Long intends to assign her interest in the agreement with Central Mendocino County Power Company to a corporation which will acquire and operate the water system. To this end there was incorporated on or about December 20, 1927, the Willits Water Company, one of the applicants herein which asks permission to issue at par $165,000 of its stock to finance the purchase of the water properties, delivery of the stock to be made as payments are made under the agreement.

The agreed purchase price to be paid for the water properties is $165,000 payable as follows: $16,500 on or before May 12, 1928, and $16,500 on or before each successive year thereafter for nine years with interest at the rate of 6.4 per cent per annum. The purchasers at their option in lieu of making such payments, or any thereof, or any part thereof, in cash, may deliver to the company (Central Mendocino County Power Company) either (a) first mortgage bonds of the vendor with all unmatured coupons thereon; or (b) second mortgage notes of the vendor; or (c) may pay any other indebtedness of the vendor and deposit receipts or discharges therefor with the vendor; all of which bonds, notes or receipts shall be received by the vendor upon account of such purchase price of the par value of such bonds or notes and accrued interest thereon, or at the face of such indebtedness as the case may be, in lieu of cash and shall be credited to such extent in the reduction of the purchase price hereinabove mentioned.

The agreement provides that the purchasers shall be given the immediate possession of the water works and water system and may remain in possession thereof and operate the same so long as they are not in default under the agreement. Upon the payment of the full purchase price and upon due and faithful performance of the covenants and agreements by the purchasers, the Central Mendocino County Power Company will execute and deliver to the purchasers or their nominee or their nominees a good and sufficient deed conveying title to said water works and water system free and clear of all mortgage liens now existing on the properties or any that may hereafter be placed on the properties by the vendor, but subject to any liens and encumbrances suffered or created by the purchasers while in possession of the water properties. It will thus be observed that the purchasers can not obtain clear title to the properties until they have paid the $165,000 or its equivalent, nor until the Central Mendocino County Power Company has paid its outstanding first mortgage bonds amounting to $141,000 and its outstanding second mortgage notes amounting to $30,000. In view of this situation we do not feel that we are warranted in authorizing the Willits Water Company at this time to issue its stock as pay-

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ments are made under the agreement. We believe that an application for permission to issue stock against the properties should be filed with the Commission after the Willits Water Company has actually acquired title to the properties. The order herein will permit the Willits Water Company to issue three shares of stock to qualify its directors and to execute the agreement filed as Exhibit "B" in Application No. 14404.

As shown in Exhibt "1" in Application No. 14403 the cost of the water properties which the Willits Water Company proposes to purchase was $236,779.69. The accrued depreciation on these properties is reported at $10,139.71. Central Mendocino County Power Company has agreed to sell the properties, as stated above, to Amy Requa Long or her nominee or nominees for $165,000. The testimony indicates that the Willits Water Company proposes to credit the difference between the historical cost of the properties, less depreciation reserve, and the purchase price, to its surplus account. We believe that, in cases such as this, it is better accounting practice if such difference as may exist between the historical cost of the properties and the purchase price be credited to a subaccount under account number twenty-nine, reserve for accrued depreciation.

ORDER.

Applications having been made to the Railroad Commission for permission to transfer properties and to issue stock, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the applications should be granted only as herein provided, and that the money, property or labor to be procured or paid for through the issue of $300 of stock is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Central Mendocino County Power Company and Amy Requa Long and/or Willits Water Company be and they are hereby authorized to execute an agreement substantially in the same form as the agreement filed in Application No. 14404 as Exhibit "B."

It is hereby further ordered, that Willits Water Company be and it hereby is authorized to issue and sell, at par, for cash, three shares of its capital stock of the aggregate par value of $300 and to use the proceeds to pay organization and incorporation expenses.

It is hereby further ordered, that Application No. 14403 in so far as it involves the issue of $164,700 of stock and Application No. 14404 in so far as it involves the transfer of properties, be and they are hereby denied without prejudice.

The authority herein granted is subject to the following conditions:

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1. The authority herein granted to execute an agreement is for the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said agreement as to such other legal requirements to which said agreement may be subject.

2. Willits Water Company shall advise the Commission of the exact date upon which it acquires possession of the water properties and commences operating them.

3. Willits Water Company shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted to execute an agreement will not become effective until Amy Requa Long and/or Willits Water Company has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $165.

5. The authority herein granted to issue stock shall become effective upon the written acceptance of such authority by Willits Water Company.

Dated at San Francisco, California, this second day of April, 1928.

DECISION No. 19565.

IN THE MATTER OF THE APPLICATION OF HAINES CANYON WATER COMPANY, A CORPORATION, FOR AN INCREASE IN RATES.

Application No. 13572.

Decided April 3, 1928.

RATES—WATER UTILITY.—Application of Haines Canyon Water Co. operating in vicinity of Tujunga and Sunland, Los Angeles County, for an increase in rates denied.

PLEADING AND PROCEDURE—IN GENERAL.—So much of the record in prior proceedings before the Commission relating to the early history of a utility, its operating conditions and methods, and actual cost of acquisition of properties, which can not be obtained from any other source, is germane to a rate proceeding and may, upon request, be properly considered as a part of the record therein.

VALUATION—INTANGIBLES—WATER RIGHTS—PERCOLATING WATERS.—In a rate proceeding a water utility is not entitled to any additional or separate value for its rights to pump water for underground sources other than those values already included in the lands as water-bearing. (*Monahan* vs. *San Jose Water Co.*, 4 C. R. C. 1101; *San Gabriel Valley W. Co.*, 8 C. R. C. 481; *City of Stockton*, 22 C. R. C. 531; *City of Marysville*, 29 C. R. C. 97.)

VALUATION—INTANGIBLES—WATER RIGHTS—IN GENERAL.—A water supply of poor quality, unsuitable for domestic purposes without treatment, and neither useful nor necessary, is not a proper item to be included in a rate base.

VALUATION—INTANGIBLES—WATER RIGHTS—APPROPRIATION.—No part of alleged present value of claimed water rights may properly be included in a rate base

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when such rights as a utility may have to appropriate surface stream flow appear to be secondary to the rights of a municipality.

VALUATION—TANGIBLES—WORKING CAPITAL—AMOUNT.—An allowance of more than one-third of the entire annual operating expenses for working capital is excessive, and but one and one-half months' average operating expenses was allowed a water utility.

VALUATION—INTANGIBLES—GOING VALUE—EARLY LOSSES.—Early business losses and development costs have no direct bearing on the going value of a utility property as it may exist years later.

VALUATION—INTANGIBLES—GOING VALUE—IN GENERAL.—Going value will not be allowed where the utility has never at any time been able to earn a full net return, being still in the development stage, and where higher rates would be prohibitive and greater than the service is reasonably worth.

RETURN—REASONABLENESS—FACTORS CONSIDERED.—It is unfair and unreasonable to require present consumers to pay a full return upon the entire alleged investment in a system designed to serve a far greater population in the future.

Hornaday and Hartranft, for Applicant.
C. W. Byrer, City Attorney, for City of Tujunga.
Everett C. Carlson, for certain consumers, Protestants.
John S. Knox, for certain consumers, Protestants.
Daisy K. Snyder, for Chamber of Commerce of the City of Tujunga, Protestant.

WHITSELL, *Commissioner*.

OPINION.

Haines Canyon Water Company, a corporation, applicant in the above entitled proceeding, is engaged in the public utility business of supplying water for domestic, irrigation and other purposes to consumers in and in the vicinity of Tujunga and Sunland, in Los Angeles County. The application alleges in effect that the rates now charged are insufficient to yield maintenance and operating expenses, depreciation and provide a reasonable return upon the capital invested. The Commission is therefore requested to establish an increased schedule of rates, and, in the meantime, to permit applicant to collect an emergency surcharge of 40 per cent on all bills for water service rendered. Public hearings in this proceeding were held at Los Angeles after all interested parties had been notified and given an opportunity to appear and be heard. After the first public hearing was held in this matter, the Commission issued its preliminary opinion and order herein (Decision No. 18721, dated August 17, 1927), denying without prejudice applicant's request for the establishment of a surcharge.

This water system was originally installed some time prior to 1910, was then known as the Freehold Water Company and its plant consisted of 263 acres of land, together with certain pipe lines, reservoirs and rights of way. This property was acquired about the year 1911 by the Western Empire Suburban Farms Association, a corporation controlled by one M. V. Hartranft, and was operated in conjunction with the project of the above association to supply water to approximately 1726 acres of land which it had subdivided into small farms or tracts and was selling to the general public. In 1918, said association transferred its water utility properties to Haines Canyon Water Com-

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pany, a corporation, the capital stock of which was owned or controlled by said association and those connected therewith. Approval of this transfer was granted by this Commission in its Decision No. 5887, dated November 1, 1918. For a more complete history and description of this system, reference is hereby made to this Commission's Decision No. 5065, dated January 21, 1918, rendered in connection with Case No. 1065 and Application No. 2912. The present water supply of this company is obtained from three wells located in and in the vicinity of the city of Tujunga, supplemented by a gravity water supply obtained from Haines and Blanchard canyons. The company also claims a right to receive gravity water from Tujunga Creek. The territory served varies considerably in elevation. Water from the wells is pumped into reservoirs located at an elevation of 1460 feet, from which it is elevated by booster equipment to other reservoirs located at elevations of 1720 feet, 1940 feet and 2070 feet. The amount of water pumped to the higher elevations depends upon the amount of gravity water obtainable from Haines and Blanchard canyons, the waters from which sources feed into the upper service area of the system. The evidence shows that, under present conditions, applicant has an ample supply of water to meet the system's demands and has apparently an abundant underground supply of water for future development.

The rates now in effect on this system were established by the Railroad Commission in its Decision No. 10896, dated August 23, 1922, and are as follows:

Minimum Monthly Charges.

¾-inch meter	$1 25
1-inch meter	1 50
1½-inch meter	2 00
2-inch meter	2 50
3-inch meter	3 00
4-inch meter	4 00
	5 00

Monthly Charges for Water Consumed.

From 0 to 400 cubic feet, per 100 cubic feet	$0 3125
From 400 to 1,000 cubic feet, per 100 cubic feet	25
From 1,000 to 5,000 cubic feet, per 100 cubic feet	20
From 5,000 to 10,000 cubic feet, per 100 cubic feet	12
All in excess of 10,000 cubic feet, per 100 cubic feet	06

The city attorney requested that the records in Case No. 1065, *Monte Vista Valley Board of Trade et al.* vs. *Western Empire Suburban Farms Association,* and Application No. 2912, *In re Western Empire Suburban Farms Association,* be made and considered a part of the records of this proceeding. Upon objection of counsel for applicant, ruling thereon was reserved. Consideration of the matter, however, leads to the conclusion that certain evidence and exhibits contained therein relate to the early history of this system, to its operating conditions and methods,

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and to the actual cost of acquiring many essential elements of this property, which can not be obtained from any other source. It therefore appears that so much of the above proceedings as throws light upon the matters indicated above is germane to this proceeding and, therefore, may be properly considered as a part of the record herein.

Detailed reports showing appraisals of applicant's properties and estimates of depreciation, together with analyses of operating expenses and revenues, were submitted by H. B. Lynch, a civil engineer and president of the utility, and by F. H. Van Hoesen, one of the Commission's hydraulic engineers. A summary of these reports is set out in the following tabulation:

	Lynch	*Van Hoesen*
Plant.		
Estimated original cost, as of April 1, 1927, less land values and intangibles	$256,136 00	$258,709 00
Land values	19,200 00	No estimate
Water rights	137,781 00	No estimate
Going value	50,000 00	----------
Working capital	10,000 00	No estimate
Totals	$473,117 00	$258,709 00
Consumers' advances to aid construction*	$18,421 00	$18,421 00
Operations.		
Replacement annuity	$5,372 00	$7,317 00
Operating expense (1925)	25,289 00	25,344 00
Operating expense (1926)	27,544 00	27,349 00
Estimated operating expenses, future	31,500 00	26,985 00
Operating revenue (1925)	45,245 00	45,245 00
Operating revenue (1926)	47,431 00	47,431 00

* Included in above totals.

The valuation of the physical properties set out above is based upon the appraisals presented to the Railroad Commission by the same engineers in connection with Application No. 7593, the proceeding in which the present rates of this utility were established. Net additions and betterments to April 1, 1927, were added. No estimate of the reproduction cost new, less accrued depreciation, was presented in the evidence of this proceeding. The appraisements were both based upon the estimated original or historical cost of the physical properties, exclusive of lands, which were apprised at present fair market value.

Mr. John R. James, on behalf of applicant, appraised the operative lands of the utility at $19,200, representing the fair market value as of June 13, 1927; while Mr. E. C. Carlson, a local real estate operator and building contractor appearing for certain consumers as well as in his own behalf, estimated the same lands to be worth $13,450. The testimony indicates that the sum of $16,000 is a reasonable value of this property for the purposes of this proceeding.

Applicant, through the testimony of Mr. Lynch, supported by Mr. H. Hawgood, claims a present value of $137,781 for water rights; while

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the testimony of P. E. Harroun, a hydraulic engineer appearing for the Commission, is to the effect that the maximum cost of the acquisition of the water rights did not exceed $29,800, including those of Tujunga Canyon, which sum of $29,800 included much land and other properties. The figures presented by applicant included $55,000 as the alleged value of its rights to pump from its wells, in addition to the physical costs thereof and the value of the lands upon which said wells were located; while such pumping rights were excluded by the engineers of the Commission.

The water rights as claimed by applicant are as follows:

1. Haines Canyon:	
4 M.I. constant flow at $4,000 per inch	$16,000 00
19.3 M.I. fluctuating flow at $2,500 per inch	48,250 00
2. Blanchard Canyon:	
3.1 M.I. fluctuating flow at $2,500 per inch	7,750 00
3. Tujunga Creek:	
17.5 M. I. flow at $1,200 per inch	21,000 00
4. Pumped from wells:	
110 M.I. at $500 per inch	55,000 00
Total	$148,000 00
Less development in canyons valued elsewhere in report	10,219 00
Total	$137,781 00

The testimony clearly shows that water is now being pumped from wells by parties other than applicant generally throughout the service area of this utility and the vicinity thereof, and, furthermore, that such underground waters may be obtained throughout said territory in quantity and quality at least equal to that obtained by the company. No evidence was presented to the Commission showing that the use of water from the other wells in the territory has diminished the yield of water from the company's sources or in any way interfered with their continued operation; neither is there anything in the record of this case indicating that this company has ever obtained an adjudicated prescriptive right to any of its underground waters or that it has at any time ever attempted to stop or enjoin anyone from obtaining water from underground sources in its service area or in the general vicinity thereof. Under these circumstances, it is clear that the applicant has not established and, therefore, is not entitled to any additional or separate value for its rights to pump water from underground sources other than those values already included in the lands as water-bearing. *In re City of Marysville*, 29 C. R. C. 97; *Monahan* vs. *San Jose Water Company*, 4 C. R. C. 1101; *In re San Gabriel Valley Water Company*, 8 C. R. C. 481, and *In re City of Stockton*, 22 C. R. C. 531.

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The testimony shows that the waters of Tujunga Canyon are of poor quality and unsuitable for domestic purposes without treatment and were used not in excess of sixty hours in 1926 and forty-eight hours in 1927. This supply clearly is neither useful nor necessary at this time and is not a proper item to be included in the rate base for the purposes of this proceeding.

Three instances of water right sales were cited by applicant but consideration of these sales shows that the conditions surrounding the transactions were wholly dissimilar. As far as actual sales are concerned, applicant herein purchased as recently as 1926 and 1927, its rights to 17.5 miner's inches of water from the Tujunga Canyon at a total out-of-pocket cost of not over $207 per inch, based upon the cost of delivering water in payment therefor, and, in 1924, acquired by purchase the ownership of approximately a one-half interest in the present Third street well, entitling it to an acreage of 23.1 miner's inches for a total cost of about $2,061.

Excluding the other properties and interests purchased along with the Haines Canyon and Blanchard Canyon properties, the evidence shows that the total original cost of acquisition of the water rights in the above canyons was not in excess of $5,000.

In former proceedings before this Commission, applicant and its predecessors in interest have made no claim to an allowance for water rights in rate proceedings, but have taken the position that the water rights belong to the lot owners in the 1726-acre service area of this utility, a portion of the purchase price of the lots and parcels of land sold being for the right to receive a share of the waters of Haines, Blanchard and Tujunga canyons, as well as certain well waters. The evidence shows that most of the original deeds given to the purchasers of the lots and parcels of land granted said purchasers a pro rata share in all of the water rights acquired by the company. (See deed between Western Empire Suburban Farms Association and David Costello, identified as protestants' Exhibit No. 2 in this proceeding.) As far as the evidence shows, there were none of the original deeds granted by the Western Empire Suburban Farms Association to purchasers of lots or tracts of land in the 1726-acre area served by this utility that did not contain provisions transferring to purchasers the title to the water rights.

Another important feature as to the rights of this utility to appropriate surface stream flow is the cloud cast upon applicant's purported rights by the adjudicated rights of the city of Los Angeles to all of the waters of the Los Angeles River and any and all of its tributaries under its original Spanish Pueblo rights. (*City of Los Angeles* vs. *Pomeroy*, 124 Cal. 597, and 125 Cal. 420; *Vernon Irrigation Company* vs. *City of Los Angeles*, 106 Cal. 237; *Feliz* vs. *City of Los*

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Angeles, 58 Cal. 73; *Lux* vs. *Haggin*, 69 Cal. 255.) Haines, Blanchard and Tujunga canyons are tributary to the Los Angeles River.

Summarizing the evidence on water rights, it may be stated that the Tujunga supply is now neither operative nor necessary; that no separate value for applicant's purported rights to pump from underground sources from wells is recognizable for the purposes of this proceeding, other than such values as already have been included in the lands as water-bearing; that such interests as applicant may have in the waters of Haines, Blanchard and Tujunga canyons appear to be secondary in priority to the rights of the city of Los Angeles and are, to this extent, probably temporary privileges only, and that, furthermore, it is clear that the water rights of Haines and Blanchard canyons, and to some extent Tujunga Canyon, have probably been transferred for valid consideration to and vested in the purchasers of lots in the original 1726-acre area. Under these circumstances, it is clear that no part of the alleged present value of these claimed water rights may properly be included in the rate base upon which the consumers should be required to pay a return.

Applicant's contention that it requires $10,000 in cash working capital is not supported by the evidence. This sum represents in excess of one-third of the entire annual operating expenses, less depreciation, for 1926. Considering that the revenues produce an average very closely approximating $4,000 per month and that due allowance has already been made for materials and supplies, together with the fact that applicant has on hand an average of $2,000 as deposits by consumers for metered service and advanced flat rate payments, it appears that, under such circumstances, an allowance of approximately one and one-half months' average operating expenses will be ample for cash working capital and, therefore, the sum of $3,600 will be allowed.

The annual maintenance and operating expenses, exclusive of depreciation, as shown by the company's records for 1925, amounted to $25,344 and $27,349 for 1926. The Commission's engineer estimated the reasonable annual operating expenses for the immediate future to be $26,985, exclusive of income tax; while applicant estimated the expenses for 1928 to be $31,500, including income tax. Conditions of operation indicate that no abnormal increase in expenses in the immediate future may reasonably be expected, and it therefore appears that the sum of $29,000, exclusive of depreciation and including income tax, should be a reasonable allowance for the operating expenses for the immediate future. The annual depreciation annuity was estimated by applicant's engineer to be $6,155 and by the engineer for the Commission $7,318, based upon the 5 per cent sinking fund annuity. The latter figure will be used for the purposes of this proceeding.

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Based upon the foregoing figures, the operations of this utility for the year 1926 resulted in a net return of 4 per cent on $278,309, representing physical properties and working capital only. Based upon the present increase in business, as indicated by the evidence, the present rates should reasonably be expected to yield 5.5 per cent on the above amount during 1928.

Applicant contends that it is entitled to $50,000, or about 18 per cent of the cost of the physical properties, for going value, and bases this claim upon alleged early business losses and development costs. The entire evidence submitted by applicant in support of this claim covered costs alleged to have been incurred for "holding" water rights and for "holding" pipe lines and other facilities necessarily constructed in advance of needs and for exploration work in connection with well-drilling, all alleged to have taken place during a period of five years immediately prior to the approximate date of the sale of the properties in 1918 to present applicant. Not only does the evidence fail to substantiate these claims of early losses or the reasonableness or necessity for the alleged development costs but this Commission has repeatedly held that early business losses and development costs have no direct bearing on the going value of a utility property as it may exist years later.

In this proceeding, full consideration has been given to applicant's claim of going value and it appears that this utility has never, at any time, been able to earn a full net return upon its investment by reason of the fact that its business is still in the development stage and higher rates would be prohibitive and greater than the service is reasonably worth, and, as this same condition still exists at the present, it is obviously idle to attempt now to determine what is the reasonable going value, if any, of this utility for the present.

In Decision No. 10896, dated August 23, 1922, in which the present rate schedule was established, the Commission did not determine a rate base for the reason that the area served was so sparsely settled and the system so obviously overbuilt for the then existing demands that a full return upon the capital investment in the bare physical properties would have resulted in an unreasonable and prohibitive rate for the service rendered. This same situation exists today. The present rates have already reached the saturation point. Present consumers can not afford to use sufficient water for lawn and garden irrigation under the rates now charged, although ample water is available. To increase these rates would, in my opinion, diminish the average water consumption to the extent of reducing revenues to an amount less than received at present. Based upon the figures presented by applicant, the granting of its request for a full return upon its alleged investment would require an increase of over $27,000 above the revenues of $47,431

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received for 1926, or approximately 57 per cent over the yield of the present rates. Based upon the average number of active consumers for the year 1926, the feet of main per consumer for that year amounted to 174. This, in conjunction with the fact that the present plant is designed to supply, and has the existing facilities to supply, a considerably greater population than is now served, clearly shows that the system is still considerably overbuilt and that the service area is only partially developed. Under these circumstances it would be unfair and unreasonable to require present consumers to pay a full return upon the entire alleged investment in such a system, designed to serve a far greater population in the future. From the evidence, this project appears to be one of those subdivisions where the full hope of those who projected the sales of lots has not been realized and that it will be some time before they will fully settle up.

The present rates on this system are already higher than the rates charged by any of the other utilities in the general vicinity which are of comparable size and operate under similar conditions. Moreover, the monthly minimum quantity rate of 400 cubic feet is far less water than such other utilities furnish for the minimum charge. It is apparent, therefore, that applicant has already enjoyed a much more favorable rate than other similar utilities, and, under the conditions above referred to, no valid reason commends itself to this Commission warranting any further increase in the present rates. It is, indeed, a matter for serious consideration if the facts do not warrant an increased amount of water for the present minimum monthly charge of $1.25, but no such change will be made at this time.

I recommend, therefore, that this application be denied, and the following form of order is recommended:

ORDER.

Haines Canyon Water Company, a corporation, having filed its application as entitled above, public hearings having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that the above entitled application be and it is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this third day of April, 1928.

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Decision No. 19566.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY, A CORPORATION, FOR AN ORDER GRANTING PERMISSION TO INCREASE PASSENGER RATES AND FARES BETWEEN POINTS IN THE STATE OF CALIFORNIA.

Application No. 13460.

VENICE BRANCH OF LOS ANGELES CHAMBER OF COMMERCE, REPRESENTING THE CITIZENS OF THE VENICE DISTRICT OF LOS ANGELES.

vs.

THE PACIFIC ELECTRIC RAILWAY COMPANY, A SUBSIDIARY CORPORATION OF THE SOUTHERN PACIFIC RAILWAY COMPANY.

Case No. 2476.

Decided April 7, 1928.

RATES—ELECTRIC RAILWAY.—Present passenger tariffs of the Pacific Electric Railway Company suspended and various experimental fares authorized. Complaint of Venice branch of the Los Angeles Chamber of Commerce dismissed.

RATES—REASONABLENESS—IN GENERAL.—One of the tests to be applied in the determination of reasonableness of rates is whether or not such rates are sufficient to pay operating expenses, taxes, and to return to the carrier a fair return on the value of the property devoted to public service.

VALUATION—DEPRECIATED COST—IN GENERAL.—When charges and allowances for depreciation made in a utility's books are on a straight-line basis, with the inclusion of depreciation charges on that basis, the use of a depreciated rate base would follow as a corollary.

DEPRECIATION—ANNUITIES—SINKING FUND.—Depreciation annuity was calculated by the Commission's engineers on a 5 per cent sinking fund basis for all depreciable property in a rate proceeding, though the carrier had not set up any depreciation for large portions of its property such as roadway and structures, treating all renewals to such property as maintenance charges.

DEPRECIATION—ANNUITIES—NEED FOR SETTING ASIDE.—If a carrier has not in past years set up adequate charges and operating expenses to take care of the depreciation of its property now maturing, such omission is fundamentally of the same nature as an omission adequately to maintain the property.

RETURN—OPERATING EXPENSES—EXTRAORDINARY EXPENSES.—Extraordinary and temporary expenses should not be charged against a short period, especially if such extra costs result in permanent benefits to the carrier. (*Pacific Electric Railway Co.*, 20 C. R. C. 1087.)

RETURN—OPERATING EXPENSES—REPLACEMENTS.—The uniform classification of accounts provides that accrual of depreciation on way and structures, power plant buildings and power plant and substation equipment is left optional with the carrier until the Interstate Commerce Commission shall direct otherwise. Thus, it can hardly be contended that the classification compels the charging to operating expenses of the cost of renewals of existing materials. If, in an estimate of operating expenses, in addition to adequate allowance for current depreciation, a further allowance was made for matured depreciation such estimate would be rejected as burdening future rate-payers with a duplication of this item.

VALUATION—TANGIBLES—PROPERTY NOT OWNED.—Leased equipment was placed on a parity with remaining property owned by a carrier for the purpose of determining a reasonable compensation for the use of the property devoted to public service. If classes of properties are picked out and placed in a preferred position, in that the interest on the value thereof is treated as an operating expense, this test will become meaningless.

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RETURN—REASONABLENESS—PARTICULAR AMOUNTS.—With many utilities the Commission has held that a 7 per cent return was not excessive. The Interstate Commerce Commission has considered 5.75 per cent a fair return for steam railroad carriers. (58 I. C. C. 220; 68 I. C. C. 676; 100 I. C. C. 79; 129 I. C. C. 25.) Six per cent was allowed a street and interurban railway classified as an interstate carrier.

RETURN—REASONABLENESS—INTERCORPORATE RELATIONSHIP.—The worth of a subsidiary electric railway to a parent railroad as a collector and distributor of the parent company's passenger and freight traffic is a factor to be considered in determining a reasonable rate of return to the allowed the subsidiary.

RATES—INTERURBAN RAILWAYS—COMMUTATION TICKETS.—There being an excessive number of forms of commutation tickets, some used only to a very limited extent, it was held to be in the public interest to eliminate all but the two most popular forms of commutation tickets.

RATES—INTERURBAN RAILWAY—IN GENERAL.—In revising a rate structure it was suggested that all fares be calculated to the nearest five-cent multiple in order to avoid complication and confusion resulting from fares of odd cents.

DISCRIMINATION—RATES—PARTICULAR CLASSES—CHILDREN.—As carriers, under section 17 (*a*) 3 of the Public Utilities Act, have authority to issue reduced rate transportation to children attending institutions of learning, while the Commission is not authorized to order such fares in effect, it is assumed that a carrier will grant to school children the most liberal privileges possible.

RATES—REASONABLENESS—SEPARATE COMMUNITIES SERVED.—As to the contention that particular interurban lines should be considered by themselves, and that rates be based on earnings of the respective lines, to segregate individual interurban lines or to pick out an individual line of the local service in any city, for the establishment of particular rates on such lines, would not only complicate the problem of fixing a reasonable rate, but would practically amount to unjust discrimination. (*Pacific Electric Railway Co.*, 22 C. R. C. 236, 244.)

RATES—IN GENERAL—EXPERIMENTAL FARES.—Where horizontal fare increases would not produce a reasonable return, present tariffs were suspended and applicant was authorized to establish experimental fares for a trial period only, the proceeding being held open for a period of one year.

Frank Carr and *C. W. Cornell*, for Applicant.

Jess E. Stephens, City Attorney; *Milton Bryan*, Deputy City Attorney; *J. L. Ronnow*, Deputy City Attorney; *J. O. Marsh*, Manager and Chief Engineer, and *F. F. Ball*, Special Engineer, Board of Public Utilities, for Protestant City of Los Angeles.

R. C. McAllister, City Attorney, and *Leonard A. Diether*, Deputy City Attorney, for Protestant City of Pasadena.

Frank L. Perry, City Attorney of the Cities of Redondo Beach and Manhattan Beach, for Protestants City of Redondo Beach and City of Manhattan Beach.

Clyde Bishop, City Attorney, for Protestant City of Newport Beach.

H. E. Veder, City Attorney, for Protestant City of South Pasadena.

A. M. Pence, City Attorney, for Protestant City of Covina.

Charles J. O'Connor, City Attorney, for Protestant City of Colton.

T. C. Gould, City Attorney, for Protestant City of Alhambra.

Bruce Mason, City Attorney, for Protestant City of Long Beach.

A. G. Wray, City Attorney, for Protestant City of Whittier.

Walter M. Dunn and *John A. Sturgeon*, for Protestants Cities of Arcadia and El Monte.

Ray L. Morroy, *Victor E. Wilson* and *W. Turney Fox* for Protestant City of Glendale.

Clyde Woodworth, City Attorney, Inglewood, El Segundo and Hawthorne, for Protestants Cities of Inglewood, El Segundo and Hawthorne.

James H. Mitchell, City Attorney, for Protestant City of Burbank.

Charles A. Rolfe, Chairman of Transportation Committee, City of Redlands, for Protestant City of Redlands.

George A. French, City Attorney, for Protestant City of Riverside.

Carson B. Hubbard, City Attorney, for Protestant City of Huntington Park.

R. C. Waltz, City Attorney, for Protestant City of Beverly Hills.

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Chester L. Coffin, City Attorney of Santa Monica, for Protestant City of Santa Monica.
E. H. Jolliffe, City Attorney, for Protestant City of Ontario.
Joseph A. Allard, City Attorney, City of Pomona, Claremont and La Verne, for Protestants Cities of Pomona, Claremont and La Verne.
C. A. Bridge, City Attorney, for Protestant City of Hermosa Beach.
John K. Hull, Deputy City Attorney, for City of Long Beach.
Jess E. Stephens and *Milton Bryan* for Protestant Committee of City Attorneys Association of Southern California.
C. A. Bland, for Protestant Chamber of Commerce of Long Beach.
E. F. Bogardus and *Carl Bush*, for Protestant Hollywood Chamber of Commerce.
J. J. Deuel and *A. M. Stanley*, for the California Farm Bureau Federation.
W. H. Engle, for Protestant Northwest Chamber of Commerce.
Davenport R. Phelps, Secretary-Manager, West Hollywood Chamber of Commerce, for Protestant West Hollywood Chamber of Commerce.
Gust Holmquist, for Protestant Wilman Chamber of Commerce.
E. W. Porter, *E. W. Savage* and *Eugene M. Rittenhouse*, for Venice Branch of Los Angeles Chamber of Commerce.
W. H. Woodard and *Earl W. Porter*, for Protestants Citizens Rate Committee of Venice, and the Citizens of Venice.
Frank W. Forester, for Protestant Knights of Pythias, 107 California Pomona Lodge.
W. H. Powell, for Protestants East Hollywood Improvement Association, Bus Committee of Hyperion Avenue and Silver Lake-Glendale Boulevard Motor Coach.
Herb H. Shiels, for Protestants Citizens Rate Committee of Venice, and Protestant City of Culver City.
Mrs. R. E. Day, for Lynwood Women's Club.
Mrs. Sarah M. Skinner, for Protestant Harriman Avenue, South Pasadena.
Leopold Jacobson, Protestant *per se*.

WHITSELL, *Commissioner*.

OPINION.

In the above entitled application, the Pacific Electric Railway Company asks for an increase in passenger rates on both its local and interurban lines. The above entitled case is a complaint on behalf of the Venice branch of the Los Angeles Chamber of Commerce seeking a reclassification and reduction in rates on the Venice Short Line of Pacific Electric Railway Company.

Application No. 13460 was filed on January 11, 1927. Hearings were held at Los Angeles, March 10, 11 and 30, April 5, October 20, 1927, January 17, 18, 19, 31 and February 1, 1928. Case No. 2476 was filed January 7, 1928. The two matters were consolidated for purpose of hearing and decision by stipulation at the hearing on January 17, 1928. The matter was submitted on briefs which have been filed by the applicant and several protestants, as well as by the complainant in Case No. 2476.

Prior to the initial hearing on March 10, 1927, applicant filed a supplemental application, seeking permission to establish temporarily and as an experiment, a scale of lower one-way and round-trip rates and increased commutation rates on selected interurban lines of applicant. Consideration was given this supplemental application at the hearings on March 10, 11, 31 and April 5. After stipulation, an order was issued by this Commission in Decision No. 18219 (29 C. R. C. 660),

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dated April 12, 1927, in which a somewhat lower scale of rates was authorized on the Los Angeles-Glendale-Burbank line to be effective during the pendency of hearings on the main application herein. Certain minor modifications were made in these rates by Decision No. 18355 (29 C. R. C. 751), dated May 14, 1927. The results of these experimental fares are now in the record.

There were before the Commission in Application No. 5806 and affiliated cases in 1920 and 1921 practically the same issues as are here presented. In Decision No. 9928 (20 C. R. C. 1087), decided December 24, 1921, a resume will be found of the Pacific Electric situation as it then existed, and except where pertinent or where conditions have changed, no restatement will be made herein. Reference is also made to the first supplemental opinion and order, Decision No. 10017 (21 C. R. C. 147), decided January 28, 1922, and to the opinion and order on rehearing, Decision No. 10930 (22 C. R. C. 235), decided September 2, 1922. These decisions were later affirmed by the Supreme Court of this state in *City of Pasadena et al* vs. *Railroad Commission*, 192 Cal. 61. I see no reason for departing from the general plan of procedure outlined in these decisions at this time.

At the initial hearing, it was suggested that the Commission's engineers conduct an investigation into the affairs of the company and report their findings to the Commission. Such an investigation has been made and the results thereof are in this record.

The evidence adduced at the hearings in these matters will now be considered, and will be divided into several general subdivisions, viz:

I. Rate base and return.
II. Interurban passenger fares.
III. Local passenger fares.
IV. Service.
V. Complaint, Venice Branch of Chamber of Commerce.
VI. Trial fares.

I. Rate Base and Return.

One of the tests to be applied in the determination of the reasonableness of rates is whether or not such rates are sufficient to pay operating expenses, taxes and to return to the carrier a fair return on the value of the property devoted to the public service.

For this purpose, the system of applicant as a whole will first be considered. The system embraces the interurban operations, both freight and passenger, and the local or street railway operations. Freight rates, however, are not at issue in this proceeding.

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A summary statement of the estimated historical cost, undepreciated, reported by our engineering department is as follows:

Valuation as of December 31, 1926	$70,618,279 00
Estimated net additions and betterments for 1927	3,032,250 00
Omitted portion of Pacific Electric Building	1,679,908 00
Materials and supplies and working capital	1,200,000 00
Total exclusive of leased equipment	$76,530,437 00
Original cost of leased equipment	11,573,042 00
Total estimated rate base	$88,103,479 00

No objection was offered as to the use of this estimate as a rate base in this proceeding, except as will be discussed below, the applicant takes exception to the inclusion of the value of leased equipment for rate base purposes.

The financial results of operation using the revenues and expenses shown by the company's books for the twelve months ending October 31, 1927, may be stated as follows:

Railway operating revenues	$19,647,428 00
Railway operating expenses	16,422,860 00
Net operating revenues	$3,224,568 00
Taxes and other net deductions	1,130,334 00
Income available for return	$2,094,234 00
Rate base, exclusive of leased equipment	$76,530,437 00
Rate of return	2.74%

There are two important features in this tabulation which require special comment.

First, included in the railway operating expense is the rental of the so-called leased equipment. The term "leased equipment" represents cars and other equipment operated exclusively in the service of applicant, but not actually owned by it. The value of the leased equipment has accordingly been deducted from the rate base for this comparison.

Second, it should be pointed out that the charges and allowances for depreciation made in the company's books are on a straight line basis, and that with the inclusion of depreciation charges on that basis, the use of a depreciated rate base would follow as a corollary. Since the record does not contain a statement of the historical cost, depreciated, it is impossible to present a proper showing through the company's book figures. If this figure were available, it would be lower than the undepreciated cost and consequently the percentage of return would be higher.

Our engineers have estimated the results of operation for 1928, on three different bases, the soundest of which is summarized as follows:

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Railway operating revenues		$19,715,100 00
Railway operating expenses		14,357,378 00
Net operating revenues		$5,357,722 00
Taxes and other net deductions		1,137,502 00
Income available for return		$4,220,220 00
Savings—		
(a) due to changes in operation	$148,880 00	
(b) due to abandonment of losing lines	114,068 00	
		262,948 00
Income after savings, available for return		$4,483,168 00
Rate base		$88,103,479 00
Rate of return		5.1%

There are six important differences between our engineers' estimate and the records as shown by the company's books, to wit:

(1) The depreciation allowances have been revised by our engineers in certain cases where the company's basis of lives and salvage appeared not to be in accord with experience. The lives in general are lengthened, while the salvage allowance is reduced. These adjustments, however, are compensating, that is, the first tends to reduce the annual allowance while the second tends to increase it.

(2) Depreciation annuity has been calculated by our engineers on a 5 per cent sinking fund basis for all depreciable property. The company does not set up any depreciation for large portions of its property such as roadway and structures, but treats all renewals to such property as maintenance charges. For those portions of the property upon which the company does set up depreciation, such as equipment, the depreciation is calculated by the company on a straight line basis.

(3) The estimated annual operating savings as a result of changes in service proposed by our engineers, amounting to $148,880 has been added to income available for return.

(4) The estimated annual operating loss on lines which are not earning sufficient to pay their out-of-pocket cost, amounting to $114,068, has been added by our engineers to income available for return.

(5) Our engineers have omitted from the estimate as above summarized, the cost of providing for any deferred maintenance or matured depreciation. The company's books include such charges for these items as are actually incurred.

(6) Leased equipment has been considered in the estimate of our engineers as though it were owned by the company. As indicated above, the company includes the equipment rental in operating expenses.

Neither applicant nor protestants have contested the propriety of making the first four adjustments for the purpose of determining the

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issues of this proceeding. Objection, however, is made by the applicant to the two adjustments last mentioned, and the merit of these objections will now be discussed.

The company contends that the item "Matured depreciation," referring to the way and structures group of expense, should be allowed in operating expense, while with respect to the amount included as "Deferred maintenance," no such contention is made.

In a previous rate decision involving this same applicant (20 C. R. C. 1087), we held in discussing this very matter of deferred maintenance, that "extraordinary and temporary expenses should not be charged against a short period, especially if such extra costs result in permanent benefits to the carrier."

In this connection, the record shows that in the estimate for 1928, prepared by our engineers, a full and complete allowance is made in operating expenses for the depreciation annuity on all depreciable items of property. If the carrier has not, in past years, set up adequate charges and operating expenses to take care of the depreciation of its property now maturing, such omission is fundamentally of the same nature as an omission adequately to maintain the property.

Counsel for applicant contends that under the uniform classification of accounts, the charging direct to operating expenses of the renewal in kind of existing materials can not be avoided. The classification of accounts provides that the accrual of depreciation on way and structures, power plant buildings and power plant and substation equipment is left optional with the carrier until the Interstate Commerce Commission shall direct otherwise. In view of this and other provisions of the classification, it can hardly be said that the classification of accounts compels the charging to operating expenses of the cost of renewals of existing materials. If our engineers, in addition to allowing an adequate allowance for current depreciation in their estimate of operating expenses, as above summarized, had added thereto a further allowance for matured depreciation, the Commission would have been forced to reject their estimate for the reason that it would have had the effect of burdening future rate payers with a duplication of this item.

The second disputed item is whether the leased equipment operated by the company may be considered as owned in the determination of the rate of return on the property used in the public service. Some years ago the company adopted the policy of securing its new rail equipment, both passenger and freight, through a form of lease from Southern Pacific Company, paying to the latter an agreed rental therefor. The amount of such equipment in use on Pacific Electric lines has increased in recent years until a large percentage of the total equipment in use is on a lease basis. The financing of this equip-

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ment is handled by the issuance of equipment trust certificates guaranteed by Southern Pacific Company and by money advanced by that company.

The estimate prepared by our staff places this leased property upon a parity with the remaining property owned by the company for the purpose of determining a reasonable compensation for the use of the property devoted to public service. If classes of properties are picked out and placed in a preferred position, in that the interest on the value thereof is treated as an operating expense, this test will become meaningless.

It appears that applicant takes the position that it has entered into a valid and lawful contract for the rental of this equipment, and that the Commission has no power to interfere with the performance of the terms of that contract. I see no necessity, at this time, of taking exception to this position of applicant, as such a position is not in conflict in any manner with what I believe to be the Commission's unmistakable duty in all rate proceedings such as this, namely, the duty of testing the reasonableness of any and all expenditures which the company incurs in performing its service.

I am, therefore, of the opinion that our engineers were fully justified in testing the reasonableness of these expenditures on the same basis that is used to test the reasonableness of compensation to which other property devoted to this same public service is entitled, and I conclude, in view of the evidence in this case, that, for the purpose of testing the reasonableness of the rates and fares of this applicant, our engineers' estimate for the year 1928 showing a sum of $4,483,168, available for return, or 5.1 per cent on an investment of $88,103,479, is a fair and proper statement of results of operation under present rates and fares.

There now remains to be considered the rate of return which should be allowed this carrier. With many of the utilities in this state, the Commission has held that a 7 per cent return was not excessive. It appears that the Interstate Commerce Commission considers a fair return to be 5.75 per cent for the steam railroad carriers (58 I. C. C. 220; 68 I. C. C. 676; 100 I. C. C. 79; 129 I. C. C. 25). Applicant is classified as an interstate carrier and its business to a large extent is comparable to that of the steam carriers. However, its revenues are greatly affected by local conditions, whereas, with a steam carrier, operating through large and diversified areas, the revenues usually balance to a certain extent by varying conditions along its lines.

The relationship of Pacific Electric Railway Company to the Southern Pacific Company is also a factor to be considered. The record shows the Pacific Electric system is worth more than $500,000 annually to the Southern Pacific as a collector and distributor of that com-

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pany's passenger and freight traffic. Also, it is a fact that the Southern Pacific is the sole owner of the stock of applicant.

The record further shows that the rate base used gives weight to an increment in the applicant's land values of between $9,000,000, and $10,000,000, over the past twenty years, a benefit which is to some degree offset by the fact that applicant has had to face, during the same period, certain losses due to abandonment of properties originally costing from $4,000,000 to $5,000,000.

I am of the opinion, after full consideration of all the circumstances here presented, that a return of 6 per cent on the rate base above found reasonable is fair and proper for this carrier at this time. On this basis, applicant is entitled to an adjustment in rates and fares over its system sufficient to earn an increase of revenues of approximately $850,000 annually, after allowing for taxes.

The foregoing is, however, but one test of the reasonableness of the applicant's request. Before considering the remaining phases of the case, the several operations of the company should be analyzed. Its services are classified for rate making purposes as local passenger, interurban passenger and freight. The freight operations are, generally speaking, confined to the interurban lines of the company.

II. Interurban Passenger Fares.

Applicant alleged that its freight business is not a burden on its passenger business. No evidence to the contrary was introduced. Our engineers state that, as a result of their studies, they believe this allegation to be true.

The results of the interurban operations, as a whole, including both freight and passenger, as stated by our engineers, are shown below:

Income available for return	$3,976,155 00
Rate base	$69,613,885 00
Rate of return	5.7%

An increase of about $210,000 in revenue is necessary to return 6 per cent on the interurban rate base.

Turning now from a discussion of applicant's financial situation, other factors affecting the reasonableness of the fares proposed will be discussed.

The interurban fares are based on a mileage scale, with rates varying from 2.75 cents per mile for one-way fares to as low as 0.90 cent per mile for commutation tickets. There are five forms of commutation tickets in general use.

The record shows clearly, and there is no disagreement, that applicant's interurban passenger revenues are shrinking due to the competition of the private automobile. The record also indicates that this shrinkage is aided by the already high one-way and round-

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trip fares of applicant as compared with the costs of operating privately owned automobiles.

Furthermore, results of the Glendale experiment indicate that it may well be that a lowering of the one-way and round-trip fares of this carrier will produce a greater net revenue and at the same time serve a materially increased number of patrons. The record also indicates the possible desirability of establishing certain other fare plans for trial and experiment to determine if greater net revenue can be produced and public interest at the same time better served.

Past experiences indicate that horizontal increases in the one-way and round-trip fares will result in a material decrease in travel, and such horizontal increases may not produce sufficient or any additional revenue. The application, in so far as it asks for increases in one-way and round-trip rates, I am convinced, should be denied.

The application also proposes to continue the 30-ride 90-day family ticket at the present rate per mile, but to convert same to a 20-ride 60-day book. This change is in reality a further concession to the patron, although the actual rate per mile is the same, as it provides this form of commutation ticket with a less total outlay of money than at present. This request, therefore, should be authorized.

The application further proposes to continue the uses of all of its remaining forms of commutation tickets but at increases of 20 per cent, except the 10-ride book which is proposed to be increased by 12½ per cent.

The conclusion is justified from the record that there is an excessive number of forms of commutation tickets, some of which are used only to a very limited extent. I am convinced that it would be in the public interest to eliminate all but the two most popular forms of these commutation tickets. With the reduction in the number of forms of these tickets it should be entirely feasible for the company to sell them on its cars and trains as well as at ticket offices. The forms to be retained should be the 20-ride 60-day ticket referred to above, and the 60-ride 40-day ticket. The 60-ride ticket is now sold at the following rates per mile, depending on length of ride:

1 to 10 miles	$0 0138
11 to 15 miles	01242
16 to 20 miles	01104
Over 20 miles	01035

These rates, the evidence shows, are unreasonably low in that they are not paying their fair share of the cost of the service. Applicant requests a 20 per cent increase in such fares, and while I am convinced that some increase is justified, I do not believe the evidence warrants the 20 per cent increase applied for. An increase of 10 per cent in the 60-ride commutation fares appears just and proper. The

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20-ride 60-day ticket should be sold at the same rate per mile as the present 30-ride 90-day ticket. In revising its rate structure in accordance with these findings, it is suggested that all fares be calculated to the nearest 5-cent multiple, in order to avoid the complication and confusion that may result from the collection of fares of odd cents. Minimum fares on interurban lines (except as otherwise provided within local street car zones) should be on a 5-cent basis, replacing the existing 6-cent basis.

In view of the fact that carriers, under the provisions of paragraph 3, section 17 (*a*) of the Public Utilities Act, have authority to issue reduced rate transportation to children attending institutions of learning, while this Commission is not authorized to order such fares in effect, it is assumed that applicant will continue to grant to school children the most liberal privileges possible.

Various appearances, representing certain of the better-paying lines, contended that their particular line should be considered by itself and the rates based on the earnings of the respective lines. This same contention was urged in the former rate proceeding of this carrier before this Commission in Application No. 5806 and affiliated cases, referred to above. In Decision No. 10930, dated September 2, 1922, in these matters, the Commission, after careful consideration, stated: "We are convinced that the only natural and justified segregation of the services rendered by this company falls into three different and distinct classes: The freight service, the interurban, and the local or street car service. Each of these services, we believe, should be self-sustaining. * * * to segregate individual interurban lines with different mileage and commutation rates for each line according to varying traffic characteristics, or to similarly pick out an individual line of the local service in any city, for the establishment of particular rates on such line, would not only greatly complicate the entire problem of fixing a reasonable rate, but would almost inevitably result in such inequalities, both as to rates and service between different communities, as would practically amount to unjust discrimination." There is nothing in this record to justify the Commission, at this time, in changing its position in this matter.

III. Local Passenger Rates.

The local rates before the Commission in this proceeding are those covering the local operations in the cities of Los Angeles, Long Beach, San Pedro, Santa Monica-Venice, San Bernardino, Riverside and Glendale.

The Commission's engineering department, in preparing its estimate for 1928, has shown a separate statement for each of the local systems operated, as follows:

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Line	Income available for return	Rate base	Rate of return
Los Angeles	$519,538 00	$12,694,631 00	4.1 %
*Pasadena	21,100 00	2,075,713 00	1.02%
Long Beach	3,707 00	1,942,613 00	0.19%
San Pedro	†15,147 00	417,097 00	------
Santa Monica-Venice	†13,814 00	683,542 00	------
San Bernardino	12,096 00	323,952 00	3.7 %
*Redlands	†1,891 00	124,709 00	------
Riverside	†495 00	89,887 00	------
Glendale	†31,113 00	76,006 00	------
*Alhambra	†13,393 00	9,604 00	------
*Santa Ana	†26,196 00	51,840 00	------
Total local lines	$454,292 00	$18,489,594 00	2.5 %

*Figures included for information only—rates not at issue in this proceeding.
† Red ink figures.

I am convinced that an increase in the local fares in the cities of Long Beach, San Pedro, Santa Monica-Venice, San Bernardino, Riverside and Glendale would result in little, if any, increased gross revenue, and the requested increase in these rates should be denied. These operations, however, are relatively unimportant and it is recommended that such fares be placed on a 5-cent basis to be consistent with the interurban fare schedules.

The above figures for the Los Angeles local service include the applicant's proportion of results of operation of the Los Angeles motor bus, the fares of which are not at issue in this proceeding. A serious problem is presented with respect to the fares on the local rail lines of applicant in Los Angeles. The record indicates that a total increased revenue of some $250,000 annually is required to yield a fair return on this property. The evidence further shows that the company's requested increase of zone fares to 7 cents and 12 cents, respectively, will not only fail to return any additional gross revenue but, it is estimated, will actually result in a decrease of nearly $60,000 under present revenues. Such a result is obviously not in the public interest and the request should be denied.

Three zone plans are proposed by our chief engineer. The only one which appears to be adequate to return the increase in revenue desired is the so-called four-zone plan, consisting of one 15-cent zone, three 10-cent zones and four 5-cent zones. This plan, it is estimated, will result in an increased revenue of $200,000 annually, or $50,000 less than the required additional revenue. There appears, however, to be no other form of fare which will return to the company a greater increase in revenue. This form of fare will have the advantage of abolishing the present objectionable odd-coin fare of 6 cents in Los Angeles. I believe the adoption of such a fare schedule is the most satisfactory disposal of the Los Angeles local situation and the accompanying

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order will so provide. The company's request to abolish its local 60-ride book, which sells for $4.80 and is good within the present 10-cent zones in Los Angeles, appears to be reasonable and should be granted. A round-trip ticket should be sold for 25 cents where the one-way fare is 15 cents.

IV. Service.

The service and operating conditions of the company have been the subject of careful study by our staff and their reports cover this subject in detail. Many recommendations have been made for changes in schedules and improvements in physical plant, after careful consideration, in cooperation with representatives of communities and company.

Substantial net operating savings have been made as a result of such survey without a sacrifice of service and in some cases with an improved service. The savings have been taken into account in considering the net return on the investment which the company is making.

Some of the physical improvements recommended have already been undertaken by applicant, and many of the operating changes recommended have been placed in effect. It is important that these recommendations be carried to completion at as early a date as possible, and our staff will be instructed to follow out each recommendation with the company to a conclusion. While I see no necessity for burdening the order in this decision with the details of these recommendations, the Commission should expect the company's cooperation in carrying out the recommedations made for the improvement of the service.

V. Complaint of Venice Branch, Los Angeles Chamber of Commerce.

The complaint of the Venice branch of the Los Angeles Chamber of Commerce urges the Commission to reclassify the Venice Short Line as a local street car line and to establish a fare of 15 cents between Los Angeles and Venice. There is some evidence and considerable discussion in the record respecting this contention. I have given careful consideration to the evidence and fail to find any controlling reasons therein upon which to base such a change in classification. As to the rates to be charged, these must, in my opinion, follow the tariffs provided for the interurban system in order that there may be no discrimination between communities.

VI. Trial Rates.

The following forms of experimental rates are recommended by Chief Engineer A. G. Mott as being worthy of consideration:

(1) An extension of the Glendale trial rates to other portions of the system;

(2) The trial of a low one-way off-peak rate;

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(3) The trial of a monthly pass;
(4) The trial of a Sunday excursion pass.

It appears desirable that experimental fare structures along these lines be placed in effect, for it is only by this means that the public, the company and the Commission may have the actual results of their effect. Any estimate, however carefully prepared, can not determine with finality whether or not there is merit in any of these plans.

Applicant has indicated its willingness to apply in a more general way to its interurban system, for a trial period, a rate schedule, based upon the plan of rates which has been in experimental use on the Glendale line. As provided in Decision No. 18219, referred to above, these experimental rates, which to date have shown encouraging results, were made effective April 16, 1927, and, in general, provide for a decrease in one-way and round-trip fares, with some increase in commutation rates. From the evidence, it now appears that applicant's proposal is reasonable and will work to the advantage of the general public.

The off-peak reduced rate experiment, proposed by our engineer, by his own estimate was indicated to be a failure from a revenue producing point of view. In view of this, together with the more general application of the so-called "Glendale plan" of reduced one-way and round-trip rates, I am reluctant to take the responsibility of requiring the establishment, at least for the present, of this somewhat radical experiment.

In addition to that experiment, a trial of a calendar month transferable pass between Los Angeles, on the one hand, and Pasadena, on the other hand, respectively, is recommended. Such a transferable pass should be good for one calendar month for holder and should be honored also within the inner zones of both Los Angeles and applicant's local system at Pasadena. No limitation should be placed on its use other than its restriction to use of but one person at a time and within the month for which sold. This pass should be sold for $9.

It is further suggested that the company place in effect a Sunday pass good over its entire system, except its Mount Lowe line, and points east of Upland, for $1. Such pass shall be sold at all agencies and by conductors. A similar Sunday pass, good without restriction, over entire system of applicant should be sold for $2.50.

Upon this record I conclude and find that the passenger fares now in effect and published in tariffs on file with this Commission are not shown to be excessive *per se*, nor are they discriminatory. It is apparent, as stated above, that applicant is in need of additional net revenue if it is to secure a reasonable return upon the value of the

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properties devoted to the public service, but I am not convinced that this result would obtain from any horizontal increases of the fares.

The present passenger tariffs and fares here in issue should be suspended and applicant authorized to establish the experimental fares set forth in the order, these fares to be published and applied for a trial period only, with a distinct understanding that should the results flowing from their application prove unsatisfactory the Commission may and will authorize the necessary adjustments. The proceeding will be held open for a period of one year for such further action as the circumstances and conditions may make necessary. If, during that period, the parties desire to terminate, modify or amplify the experimental rates, or if the Commission should desire to extend or curtail any of these experiments, further consideration may be given by further hearing and supplemental order in this application and with the benefit of the record already adduced in this proceeding.

In the detailed preparation of the tariffs applicant will be expected to confer with the appropriate members of the Commission's staff for the purpose of obtaining their advice as to the specific application of the general principles set forth herein.

I propose the following form of order:

ORDER.

Pacific Electric Railway Company having applied to the Commission for an order authorizing the increasing of its passenger fares, and the Venice branch of the Los Angeles Chamber of Commerce having filed complaint regarding the fares and service of applicant's Venice Short Line, public hearings having been held, and the Commission basing its findings upon a consideration of the entire record, hereby finds as a fact that the present fares do not produce sufficient net revenue to provide a reasonable return on the value of the properties devoted to the public service; now therefore,

It is hereby ordered, that applicant, Pacific Electric Railway Company, be and it is hereby authorized to suspend until the further order of the Commission all passenger tariffs containing fares, rules and regulations inconsistent with the fares, rules and regulations hereinafter prescribed.

It is hereby further ordered, that applicant, Pacific Electric Railway Company, be and it is hereby authorized to establish within twenty days from the date of this order, upon not less than one day's notice to the Commission and the public, tariffs containing fares upon the following basis, which fares are for experimental purposes and shall remain in effect until the further order of the Commission:

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INTERURBAN FARES.

1. One-way fares based 2 cents per mile between Los Angeles, Pasadena, Sierra Madre, Glendora, Temple, North Pomona, Pomona, Whittier, Stern, Santa Ana, Balboa, Long Beach, San Pedro, Redondo Beach, Venice, Santa Monica, Owensmouth, San Fernando, Glendale, Burbank and all points intermediate thereto.

2. Round-trip fares based 5 cents less than double the one-way fare where the one-way fare is 15 cents and not more than 25 cents, and 10 cents less than double the one-way fare where the one-way fare is 30 cents or more, between Los Angeles, Pasadena, Sierra Madre, Glendora, Temple, North Pomona, Pomona, Whittier, Stern, Santa Ana, Balboa, Long Beach, San Pedro, Redondo Beach, Venice, Santa Monica, Owensmouth, San Fernando, Glendale, Burbank and all points intermediate thereto.

3. One-way fares based 2.75 cents per mile between all points not specifically set forth in paragraph 1.

4. Round-trip fares based 2.25 cents per mile between all points not specifically set forth in paragraph 2.

5. 30-ride family 90-day fare based 1.75 cents per mile between all points not specifically set forth in paragraph 1.

6. 60-ride individual 40-day fare based:

1 to 10 miles	1.518 cents per mile
10.01 to 15 miles	1.366 cents per mile
15.01 to 20 miles	1.214 cents per mile
Over 20 miles	1.138 cents per mile

between all points on applicant's line.

7. 60-ride individual 40-day fare at $2.25 in addition to the 60-ride fares authorized in paragraph 6 hereof, between Los Angeles and Pasadena, Santa Monica-Venice, Glendale, San Pedro and Long Beach, and good for transportation on the local lines of applicant within the inner zones of Pasadena, Santa Monica-Venice, Glendale, San Pedro and Long Beach.

8. The fares authorized in the preceding paragraphs 1 to 7, inclusive, shall be subject to the following conditions:

(a) In computing fares the nearest 5-cent multiple shall be used.

(b) The minimum one-way fare to and from Los Angeles shall be 10 cents, except that between Los Angeles and Venice via the Hollywood line the minmium one-way fare shall be 5 cents.

(c) The minimum one-way fare between all other points shall be 5 cents.

(d) The minimum round-trip fare shall be 10 cents.

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(e) Fares to and from Redondo Beach, Hermosa Beach and Manhattan Beach shall apply via either the Del Rey line or via the Gardena-Hawthorne line.

(f) Fares shall apply only to the terminus of the interurban line on which the fare is paid.

(g) All fares shall be based on the short line mileage.

(h) In no case shall the fares authorized herein exceed the aggregate of intermediate fares.

(i) All interurban fares shall be constructed on actual mileage except in communities where it is necessary to zone certain terminal points.

(j) The fares authorized herein shall not apply to, from or between points on the Mt. Lowe line.

LOCAL FARES.

9. A one-way fare of 5 cents in Los Angeles between points within the first, second, third or fourth zones described in paragraph 14.

10. A one-way fare of 10 cents in Los Angeles between points within any two contiguous zones described in paragraph 14.

11. A one-way fare of 10 cents in Los Angeles between points within any three contiguous zones described in paragraph 14.

12. A one-way fare of 15 cents in Los Angeles between points within any four contiguous zones described in paragraph 14.

13. A round-trip fare of 25 cents in Los Angeles between points within any four contiguous zones described in paragraph 14.

14. *Zone limits in Los Angeles*—

Local line	*First*	*Second*	*Third*	*Fourth*
Hollywood line	Park Junction	Vermont ave.	La Brea ave.	Sherman
Santa Monica blvd. line	Park Junction	Vermont ave.	La Brea ave.	Sherman
Edendale line	Park Junction	Semi Tropic Park	----------	----------
Echo Park ave. line	Sunset blvd. & Echo Park ave.	End of line	----------	----------
West 16th st. line	Hoover	Vineyard	----------	----------
Watts line	Amoco	Florence	Watts	----------
Sierra Vista line	Valley Junction	Rose Hill	Sierra Vista	----------
South Pasadena line	Mission road	Avenue 43	Arroyo Seco	Fair Oaks ave.

15. A one-way fare of 5 cents between all points on the local lines of applicant in the cities of Long Beach, San Pedro, Santa Monica-Venice, San Bernardino, Riverside and Glendale where the one-way fare is now 6 cents.

16. A one-way fare of 10 cents between all points on the local lines of applicant in the cities of Long Beach, San Pedro, Santa Monica-Venice, San Bernardino, Riverside and Glendale where the one-way fare is in excess of 6 cents.

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MONTHLY PASS.

17. A calendar month pass of $9 between Los Angeles, Pasadena and points intermediate thereto, good for transportation of bearer between the points on applicant's interurban lines as named above, and between points on the local lines within the inner zone of Los Angeles and Pasadena, this pass to be sold by ticket agents and conductors within the territory used.

SUNDAY PASSES.

18. A Sunday pass of $1 good for the use of holder between all points on applicant's entire system, both local and interurban, except to and from Mount Lowe, or to, from or between points east of Upland, this pass to be sold by all ticket agents and conductors on the Sunday for which honored and on the preceding Saturday.

19. A Sunday pass of $2.50 for the use of holder between all points on applicant's entire system both interurban and local, this pass to be sold by all ticket agents and conductors on the Sunday for which honored and on the preceding Saturday.

It is hereby further ordered, that the complaint of the Venice Branch of the Los Angeles Chamber of Commerce, Case No. 2476, be and the same is hereby dismissed.

The Commission reserves the right to make such further order or orders in this proceeding as may appear just and reasonable.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this seventh day of April, 1928.

DECISION NO. 19568.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA WATER SERVICE COMPANY, A CORPORATION, FOR (1) ORDER AUTHORIZING THE ISSUE OF STOCKS AND BONDS, (2) ORDER AUTHORIZING MORTGAGE OF CERTAIN PUBLIC UTILITY PROPERTIES AND (3) JOINTLY WITH C. B. JACKSON, CHICO WATER SUPPLY COMPANY, A CORPORATION; PORT COSTA WATER COMPANY, A CORPORATION; FRESNO CITY WATER CORPORATION, A CORPORATION; VISALIA CITY WATER COMPANY, A CORPORATION; ELECTRIC WATER COMPANY, A CORPORATION; BAKERSFIELD WATER WORKS, A CORPORATION, AND HERMOSA-REDONDO WATER COMPANY, A CORPORATION, RESPECTIVELY, FOR ORDER AUTHORIZING THE PURCHASE AND SALE OF CERTAIN PUBLIC UTILITY SECURITIES AND PROPERTIES, AND JOINTLY WITH PETALUMA POWER AND WATER COMPANY, A CORPORATION; BELVEDERE WATER CORPORATION, A CORPORATION; AND C. B. JACKSON, FOR ORDER AUTHORIZING THE PUR-

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CHASE AND SALE OF CERTAIN PUBLIC UTILITY SECURITIES AND PROPERTIES, ADDITIONAL PETITIONERS.

Application No. 13514.

Decided April 9, 1928.

SECURITY ISSUES—BONDS.—Decision No. 19467 (31 C. R. C. 327) modified so as to permit California Water Service Company to issue $6,254,000 of thirty-year first mortgage 5 per cent bonds in lieu of twenty-five-year bonds in the same amount. Petition for rehearing dismissed upon request of applicant.

BY THE COMMISSION.

SUPPLEMENTAL ORDER.

The California Water Service Company having asked the Commission to modify Decision No. 19467, dated March 12, 1928, so as to permit the company to issue $6,254,000 of thirty-year first mortgage 5 per cent bonds in lieu of the $6,254,000 of twenty-five-year first mortgage 5 per cent bonds authorized by said decision and to dismiss its petition for rehearing filed on March 31, 1928, and the Commission having considered applicants' requests and being of the opinion that such requests should be granted;

It is hereby ordered, that Decision No. 19467, dated March 12, 1928, be and the same is hereby modified so as to permit the California Water Service Company to issue $6,254,000 of thirty-year first mortgage 5 per cent bonds, due April 1, 1958, in lieu of the $6,254,000 of twenty-five-year first mortgage 5 per cent bonds authorized by said decision; said thirty-year bonds to be callable at any time to and including April 1, 1931, at 107½ per cent of the principal thereof; thereafter to and including April 1, 1936, at 106 per cent of the principal thereof; thereafter to and including April 1, 1941, at 105 per cent of the principal thereof; thereafter to and including April 1, 1946, at 104 per cent of the principal thereof; thereafter to and including April 1, 1951, at 103 per cent of the principal thereof; thereafter to and including April 1, 1955, at 102 per cent of the principal thereof; thereafter to and including April 1, 1957, at 101 per cent of the principal thereof; and thereafter and until maturity at the principal thereof, in each case together with the interest accrued to the date fixed for redemption; provided that none of said thirty-year bonds may be delivered until the Commission has authorized the California Water Service Company to execute a mortgage and/or deed of trust to secure the payment of said bonds.

It is hereby further ordered, that the petition for rehearing filed by California Water Service Company in this proceeding on March 31, 1928, be and the same is hereby dismissed.

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It is hereby further ordered, that Decision No. 19467, dated March 12, 1928, shall remain in full force and effect except as modified by Decision No. 19540, dated March 31, 1928, and this supplemental order.

Dated at San Francisco, California, this ninth day of April, 1928.

DECISION No. 19571.

IN THE MATTER OF THE APPLICATION OF PALM VALLEY WATER COMPANY FOR AUTHORITY TO SELL ITS PROPERTIES AND TO DISCONTINUE PUBLIC UTILITY SERVICE AND OF PALM SPRINGS WATER COMPANY FOR AUTHORITY TO PURCHASE THE SAID PROPERTIES AND TO ASSUME THE SAID PUBLIC UTILITY SERVICE AND TO ISSUE COMMON STOCK IN PAYMENT FOR SAID PROPERTIES AND TO SELL CERTAIN OF ITS COMMON STOCK FOR THE PURPOSE OF PAYING FOR ADDITIONS TO SAID SYSTEM.

Application No. 14368.

Decided April 9, 1928.

TRANSFER—WATER SYSTEM—SECURITY ISSUES.—Palm Valley Water Company authorized to transfer its properties to Palm Springs Water Company and the latter to issue $100,000 of common capital stock.

SECURITY ISSUES—IN GENERAL—NECESSITY OF VALUATION.—The granting of an application to transfer properties and to issue securities does not necessitate the determination of the value of water rights which it is alleged are owned by the vendee company.

Woodruff, Musick, Pinney and Hartke, by *W. B. Pinney*, for Applicant.
Carl I. Wheat, for California Railroad Commission.

BY THE COMMISSION.

OPINION.

In this proceeding the Palm Valley Water Company asks permission to sell its properties to Palm Springs Water Company and thereupon discontinue public utility service. The Palm Springs Water Company asks permission to purchase said properties and to issue $100,000 of its common capital stock of which $80,000 is to be delivered in payment for the properties of Palm Valley Water Company and $20,000 to be sold for cash to pay indebtedness.

The Palm Springs Water Company was organized on or about October 29, 1927. It has an authorized stock issue of $200,000 divided into 2000 shares of $100 each. It was organized for the express purpose of acquiring all of the properties, assets and business of Palm Valley Water Company, and of assuming and conducting the public utility service of supplying water to the inhabitants of the village of Palm Springs, Riverside County, California.

It is of record that the Palm Valley Water Company for many years last past has owned and operated, and now does own and operate, the

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public utility water service serving the unincorporated town of Palm Springs and territory adjacent thereto. The business of the company has been increasing rapidly during the past two years. The total number of services at present is reported at 229 of which approximately fifty were added during the past eight months. It is estimated that during the year 1928 an average of approximately 900,000 cubic feet of water per month will be delivered to consumers. The operating revenues of this water system for 1925 are reported at $9,816.41; for 1926 at $12,394.06 and for 1927 at $14,483.93.

It appears that the company has recently constructed a reservoir having a capacity of 1,500,000 gallons and a new ten-inch pipe line from said reservoir to Indian avenue. The sum in excess of $20,000 was expended for these improvements. This money was obtained by the issue of short term notes and the creation of other evidences of indebtedness. It is the intention of the Palm Springs Water Company to assume the indebtedness of Palm Valley Water Company and then issue and sell $20,000 of stock for cash to A. F. Hicks and use the money to pay indebtedness assumed.

Applicants in their Exhibit "B" submit the following appraisal as of July 1, 1927, of the properties of Palm Valley Water Company:

A. Water rights.	
1. Chino Creek water rights, capitalized value of pumped water	$74,000 00
2. Chino Canyon spreading water rights, cost of filings, surveys, etc.	700 00
3. Chino Canyon development rights, exchange value of Whitewater ditch	20,256 00
4. Snow Creek water rights, cost of filings and surveys	950 00
	$95,906 00
B. Physical properties—original cost less depreciation (land included at present value).	
1. Diversive and collective works	$4,536 00
2. Transmission pipe lines	14,835 00
3. Distributing lines and appurtenances	23,584 00
4. Reservoirs and appurtenances	6,029 00
5. Services and service pipe	3,010 00
6. Meters and meter boxes	2,395 00
7. Buildings and fences	1,032 00
8. Supplies and materials	1,170 00
9. Auto truck	400 00
10. Office equipment and tools	415 00
11. Land	2,500 00
Total value physical properties	$59,906 00
Grand total	$155,812 00

The foregoing valuation does not include the new reservoir and pipe line mentioned above.

By Decision No. 16956, dated June 19, 1926, in Application No. 12676, the Commission authorized the Palm Valley Water Company to exchange certain rights of way and ditch system for water and other

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rights owned and controlled by Prescott T. Stevens in and about Chino Canyon. At the time of the exchange a value of $20,256 was placed on the properties which the company transferred to Prescott T. Stevens in order that it might develop an additional water supply in Chino Canyon.

For the purpose of this proceeding we will consider the $20,256 as the cost of obtaining water rights. We do not believe that the granting of this application necessitates the determination of the value of the water rights which it is alleged are owned by the Palm Valley Water Company.

Applicants in their application state and agree that at no future time will any of the valuations referred to or contained in this application, or the permission to issue any of the stock herein referred to, be used as a basis for the making of any rates in connection with the supplying of water by applicants, or either of them, to the residents of Palm Springs or the territory contiguous thereto.

ORDER.

Palm Valley Water Company having applied to the Railroad Commission for permission to sell its properties described in Exhibits "B" and "C" to the Palm Springs Water Company, and Palm Springs Water Company having asked permission to issue $100,000 of its common capital stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required by the applicant, Palm Springs Water Company, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted as herein provided; therefore,

It is hereby ordered, as follows:

1. Palm Valley Water Company may sell to Palm Springs Water Company, and Palm Springs Water Company may purchase the properties described in Exhibits "B" and "C" and to assume the indebtedness and the public utility service of Palm Valley Water Company.

2. Upon the assumption of the public utility service by the Palm Springs Water Company, Palm Valley Water Company may discontinue its public utility service.

3. Palm Springs Water Company may issue on or before July 1, 1928, $100,000 of its common capital stock of which $80,000 may be delivered to the Palm Valley Water Company in payment for its properties and $20,000 shall be sold for cash at not less than par and the proceeds used to pay indebtedness assumed by applicant, Palm Springs Water Company.

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4. The authority herein granted will become effective upon the written acceptance by applicants of such authority.

5. Applicant shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

6. Within thirty days after the transfer of the properties herein authorized, Palm Springs Water Company shall file with the Railroad Commission a certified copy of the deed or any other instrument under which it acquired and holds title to said properties and shall also file with the Commission a statement showing the date on which it acquired said properties and the date on which it took possession of said properties.

7. The consideration which Palm Springs Water Company is paying for the properties of Palm Valley Water Company shall not be urged before this Commission as a measure of the value of said properties for any purpose other than the transfer herein authorized.

Dated at San Francisco, California, this ninth day of April, 1928.

DECISION No. 19576.

IN THE MATTER OF THE APPLICATION OF THE CITY OF POMONA FOR AN ORDER AUTHORIZING THE CONSTRUCTION AND INSTALLATION OF A GRADE CROSSING ACROSS A RAILROAD.

Application No. 14107.

Decided April 9, 1928.

CROSSINGS.—City of Pomona authorized to construct Fulton road across Covina branch of the Southern Pacific Company.

CROSSINGS—GRADE CROSSINGS—IN GENERAL.—Where carriers objected to the opening of a proposed crossing by a city, upon the ground that flood waters which would be diverted and carried by the improvement contemplated might damage certain railroad fills some distance from the crossing, in view of the somewhat doubtful justification for such crossing, authorization was granted, subject to conditions properly protecting the carriers in that respect.

Joseph A. Allard, Jr., for Applicant.

R. E. Wedekind, for Southern Pacific Company and Pacific Electric Railway Company, Protestant.

BY THE COMMISSION.

OPINION.

In this application the city of Pomona requests permission to construct Fulton road at grade across the Covina branch of Southern Pacific Company.

A public hearing was held in this matter before Examiner Williams at Pomona, January 9, 1928, at which time the matter was submitted.

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Fulton road extends to the southwest of the railroad to Walnut avenue, a distance of about a quarter of a mile, while to the northeast of the railroad this highway extends to Lordsburg road, a distance of about five-eighths of a mile, where it turns due north to a junction with Thompson Creek near the city limits. The railroad to be crossed is Southern Pacific Company's Covina branch, extending from Pomona to Covina. The section of track in the vicinity and over the proposed crossing is operated jointly by the Pacific Electric Railway Company and Southern Pacific Company, the former operating its Pomona passenger and freight trains and the latter only local freight trains, except during county fair week when special passenger trains are operated. The junction of the two companies' lines is at Ganesha Junction, about 300 feet south of the crossing. Trains taking the switch will undoubtedly operate at moderate speeds over this crossing. The view is unobstructed. The record shows that the Pacific Electric operates a total of about twenty-nine trains daily over this track with an additional four trains daily during the week when the county fair is held and that the Southern Pacific Company operates one freight train each way daily. The nearest public crossings to the proposed crossing are at Fair avenue, 2262 feet to the northwest, and at Tolman avenue, 1339 feet to the southeast of Fulton road.

The railroad companies opposed the granting of this application principally upon the ground that flood waters which would be diverted and carried by the improvement contemplated by the city might damage certain railroad fills some distance from the crossing, but were willing to withdraw their opposition if properly protected in this respect. From the evidence it appears proper to authorize the opening of the proposed crossing, but in view of the somewhat doubtful justification for it, to make the order subject to the conditions requested by the companies, which under the peculiar circumstances here present seem reasonable, and which met with the acquiesence of the applicant.

The following form of order is recommended:

ORDER.

The city of Pomona, county of Los Angeles, State of California, having made application for permission to construct a public road, known as Fulton road, at grade across the tracks of the Covina branch of Southern Pacific Company, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision; therefore,

It is hereby ordered, that permission and authority be and it is hereby granted to the city of Pomona, county of Los Angeles, State of California, to construct Fulton road at grade across the tracks of the Covina branch of Southern Pacific Company at the location hereinafter

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particularly described and as shown by the map attached to the application.

Description of Crossing.

Beginning at a point in the southerly line of the Southern Pacific Railway Company's right of way (Covina branch) said point being N. 18° 38′ 30″ W. twelve and seventy-nine hundredths (12.79) feet from the most northerly corner of lot 19, El Paraiso Tract, as recorded in book 28, page 60, map records of Los Angeles County, California; thence running N. 32° 46′ 30″ E. seventy-six and seventy-six hundredths (76.76) feet to a point in the northerly line of said Southern Pacific Railway Company's right of way (Covina branch); thence running S. 18° 38′ 30″ E. seventy-six and seventy-six hundredths (76.76) feet along said right of way line; thence running S. 32° 46′ 30″ W. seventy-six and seventy-six hundredths (76.76) feet to a point in the southerly line of said Southern Pacific Railway Company's right of way (Covina branch); thence running N. 18° 38′ 30″ W. along said southern right of way line seventy-six and seventy-six hundredths (76.76) feet to the point of beginning.

The above crossing shall be identified as Crossing No. B2-513.0.

Said crossing shall be constructed subject to the following conditions and not otherwise:

(1) The authority to construct the said crossing shall not become effective unless and until the railroad fills along San Jose Creek shall have been protected as to flood waters to the satisfaction of the railroad company, and until said railroad company shall have filed with this Commission its approval of the proposed plans for protection, or until this Commission shall have, in case of disagreement between the city and the railroads, by further order authorized the construction and opening of the said crossing.

(2) The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of that portion of said crossing up to lines two (2) feet outside of the outside rails shall be borne by applicant. The maintenance of that portion of the crossing between lines two (2) feet outside of the outside rails shall be borne by Southern Pacific Company. No portion of the initial cost herein assessed to applicant for the construction of said crossing shall be assessed by applicant in any manner whatsoever to the operative property of Southern Pacific Company.

(3) The crossing shall be constructed of a width not less than twenty-four feet, nor more than sixty feet, and at an angle of approximately fifty-one degrees to the railroad and with grades of approach substantially equivalent to those shown on Exhibit "A," sheet 3, attached to the application; shall be constructed substantially in accordance with Standard No. 3, as specified in General Order No. 72 of this Commission; shall be protected by a Standard No. 1 crossing sign, as specified in General Order No. 75 of this Commission, and shall in every way be made suitable for the passage thereon of vehicles and other road traffic.

(4) Applicant shall, within thirty days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing.

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(5) If said crossing shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(6) The Comisssion reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this ninth day of April, 1928.

DECISION No. 19577.

IN THE MATTER OF THE APPLICATION OF SOUHERN CALIFORNIA EDISON COMPANY FOR AUTHORITY TO ACQUIRE THE PROPERTIES AND FRANCHISES OF OJAI POWER COMPANY AND OF OJAI POWER COMPANY TO SELL ITS PROPERTIES AND FRANCHISES TO SOUTHERN CALIFORNIA EDISON COMPANY.

Application No. 14535.

Decided April 10, 1928.

TRANSFER.—Ojai Power Company authorized to transfer its properties to Southern California Edison Company.

Roy V. Reppy and *Gail C. Larkin*, for Applicants.

BY THE COMMISSION.

OPINION.

In this proceeding the Railroad Commission is asked to enter its order authorizing the Ojai Power Company to sell and convey all of its business, franchises and properties to the Southern California Edison Company and authorizing the Southern California Edison Company to purchase said properties.

By Decision No. 19413, dated February 25, 1928, in Application No. 14332, the Commission authorized the Southern California Edison Company to acquire all the authorized, issued and outstanding common capital stock of the Ojai Power Company at not more than $144 per share, provided that not more than $113 of the purchase price per share shall be charged to an asset account or capitalized through the issue of securities, and that the difference between the purchase price per share and said $113 per share be charged to Account 508, miscellaneous debits to profit and loss.

Applicants now report that pursuant to the authority granted in such decision, the Southern California Edison Company has acquired to date $164,900 of the outstanding $190,600 of the common stock of

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the Ojai Power Company. It intends to acquire ultimately all of such outstanding stock. The Edison Company now desires to purchase from the Ojai Power Company its business properties and franchises as a whole in consideration of the assumption by the Edison Company of any and all debts and liabilities of Ojai Power Company and the payment of the sum of $215,378 to the Ojai Power Company, at the time said properties are conveyed to the Edison Company. As of January 31, 1928, the indebtedness of the Ojai Power Company is reported at $10,975.66. Its current assets are in excess of its indebtedness.

A description of the properties which the Ojai Power Company intends to sell to the Southern California Edison Company is contained in the proposed deed filed in this proceeding as Exhibit "C."

The testimony in Application No. 14332 wherein the Edison Company asked permission to purchase the issued and outstanding stock of the Ojai Power Company shows that the Edison Company, upon the acquisition of the Ojai Power Company properties, will continue in effect the Ojai Power Company water rates; that it will put into effect the Edison lighting rates, which are lower than the Ojai Power Company rates, and that any Ojai Power Company rates which may be lower than the Edison rates will be continued in effect.

ORDER.

The Ojai Power Company having asked permission to sell its properties to Southern California Edison Company, and Southern California Edison Company having been asked to acquire and operate such properties, and the Commission having considered such request, and being of the opinion that this is not a matter in which a public hearing is necessary and that the granting of this application is in the public interest; therefore,

It is hereby ordered, that the Ojai Power Company be and it is hereby authorized to sell to Southern California Edison Company, for the consideration mentioned in this application, all of its business, franchises and properties, which business, franchises and properties the Southern California Edison Company is hereby authorized to acquire and operate.

It is hereby further ordered, that the authority herein granted shall become effective in ten days after the date hereof, and that the Southern California Edison Company shall file with the Railroad Commission a certified copy of the deed or other instrument under which it acquires and holds title to said properties, and shall also file with the Railroad Commission a statement showing the actual consideration paid for said properties, the date on which it acquired the properties and the date on which it took possession of the same.

Dated at San Francisco, California, this tenth day of April, 1928.

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DECISION No. 19579.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND AND OPERATE ITS AUTOMOBILE STAGE SERVICE AS A COMMON CARRIER OF PASSENGERS AND EXPRESS MATTER BETWEEN MOJAVE AND LONE PINE, CALIFORNIA, AND INTERMEDIATE POINTS.

Application No. 12402.

IN THE MATTER OF THE APPLICATION OF GEORGE W. WILKINS TO SELL HIS ONE-HALF INTEREST, AND GUY S. ALEXANDER TO PURCHASE SAID ONE-HALF INTEREST, IN AN AUTOMOBILE STAGE LINE, KNOWN AS THE "BISHOP-MONO LAKE STAGE LINE," OPERATED BETWEEN BISHOP AND MONO LAKE, CALIFORNIA, AND INTERMEDIATE POINTS, AND APPLICATION OF GUY S. ALEXANDER AND HIS COPARTNER, L. B. LARSON, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND THEIR SERVICE FROM ALL POINTS NORTH OF BISHOP TO PASADENA AND LOS ANGELES.

Application No. 13819.

IN THE MATTER OF THE APPLICATION OF GEO. W. WILKINS AND L. B. LARSON FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AUTO PASSENGER AND EXPRESS SERVICE BETWEEN BISHOP AND MONO LAKE AND ALL POINTS INTERMEDIATE THERETO AND POINTS WITHIN FOUR MILES OF MAIN ROAD.

Application No. 13878.

Decided April 10, 1928.

CERTIFICATES—AUTOMOTIVE TRANSPORTATION.—G. W. Wilkins and L. B. Larson authorized to operate between Bishop and Mono Lake and specified intermediate points.

MONOPOLY AND COMPETITION—PROTECTION AFFORDED EXISTING UTILITY.—While through and more expeditious stage service would be desirable for the public traveling to and from a resort country, where the establishment of such seasonal stage service would seriously affect the ability of an existing carrier to continue present daily passenger and express service which was being maintained at a substantial loss throughout the entire year, the volume of business was held not sufficient to justify the establishment of further public transportation.

CONSOLIDATION, MERGER AND SALE.—Although no protestant objected to a proposed transfer of a one-half interest in an automotive stage line, certain inequalities appearing in the proposed agreement, formal approval was withheld pending the filing of a revised agreement.

Earl A. Bagby, for Applicant in Application No. 12402; for California Transit Co. and Owens Valley Transportation Co., Protestants in Applications Nos. 13819 and 13878.

Edward Stern, for American Railway Express Company, Protestant in Applications Nos. 12402 and 13878.

Jos. Hellen and *A. A. Jones*, for Southern Pacific Company, Protestant in Applications Nos. 12402 and 13819.

Guy S. Alexander and *L. B. Larson*, for Applicants in Applications Nos. 13819 and 13878 and Protestants in Application No. 12402.

E. D. Melcker, for Pasadena Chamber of Commerce, Altadena Chamber of Commerce, and Isaak Walton League, favoring Application No. 13819.

Harvey W. Guthrie, for Smith Auto Company, Protestant in Application No. 13878.

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BY THE COMMISSION.

OPINION.

In Application No. 12402, Pickwick Stages System, a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile stage service as a common carrier of passengers and express between Mojave and Lone Pine and the intermediate communities at Cinco, Ricardo, Tavern, Freeman, Nacka, Little Lake, Haiwee, Olancha and Owens Lake, as a part of and to be operated in conjunction with its present system. By an amended application California Transit Co., a corporation, having succeeded to the interest of Pickwick Stages System, is substituted as applicant in Application No. 12402. In the amended application California Transit Co. alleges that it has entered into an agreement with Owens Valley Transportation, Storage and Packing Company, a corporation, for the leasing and ultimate purchase of the operative rights of said Owens Valley Transportation, Storage and Packing Company covering the transportation of passengers, express and freight between Lone Pine and Bishop and intermediate points, together with certain branch line service. By reason of the substitution of applicant California Transit Co. for Pickwick Stages System and the agreement between California Transit Co. and Owens Valley Transportation, Storage and Packing Company, applicant California Transit Co. herein proposes the establishment of an automobile passenger and express service between Mojave and Lone Pine and between Lone Pine and Bishop, each of said services to be consolidated with the operations of California Transit Co. as now operated between Los Angeles and Mojave and between Mojave and Bakersfield as well as with the rest of its transportation system. Applicant California Transit Co. represents that the granting of its application, in so far as it relates to any portion thereof, is dependent upon the granting of other portions thereof; in other words, applicant does not desire to acquire the operative rights of Owens Valley Transportation, Storage and Packing Company if it should not be authorized to acquire the proposed operative rights between Mojave and Lone Pine, nor does applicant desire to acquire the operative rights between Mojave and Lone Pine unless it is also authorized to acquire the operative rights of Owens Valley Transportation, Storage and Packing Company; nor does applicant desire to obtain either of the operative rights unless the same may be consolidated with each other and with the present operative system of applicant, so that through routes and joint fares may be established between Mojave and Bishop and all intermediate points on the one hand, and all points now served by applicant on the other hand, and so that operation may be conducted with through stages between Los Angeles and Bishop, via Mojave and Lone Pine, serving all intermediate points.

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Applicant prays for an order authorizing:

1. The lease and purchase of the operative rights and equipment of Owens Valley Transportation, Storage and Packing Company.

2. The operation of passenger and express auto stage service as a common carrier between Mojave and Lone Pine and intermediate points.

3. The consolidation of the above operations with each other and with the present operations of the applicant, thereby resulting in the establishment of through routes and joint rates between said operative rights and routes to be so acquired and the points at present served by the applicant and so that through service might be established between Los Angeles and Bishop, via Mojave and Lone Pine, serving all intermediate points in the transportation of persons and express.

In Application No. 13819 George W. Wilkins, L. B. Larson and Guy S. Alexander have petitioned for an order of the Railroad Commission authorizing a transfer of the half interest in the operative rights and equipment used in the conduct of an automobile stage line between Bishop and Mono Lake and intermediate points from the partnership of Geo. W. Wilkins and L. B. Larson operating under the name of Bishop-Mono Lake Stage Line, to the partnership of Guy S. Alexander and L. B. Larson, and for a certificate of public convenience and necessity authorizing the extension of service for the transportation of passengers between Los Angeles and Pasadena and all points now served north of Bishop.

In Application No. 13878 George W. Wilkins and L. B. Larson, copartners operating under the name and style of Bishop-Mono Lake Stage Line, have petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of automobile stage service for the transportation of passengers and express between all intermediate points between Bishop and Mono Lake and also to and from Whitmore Tubs, Rymer's Camp, and Los Angeles High Sierra Playground and all intermediate points, same being located from one to four miles off the main highways.

Public hearings on the above applications were conducted by Examiner Handford at Bishop, Mojave, Los Angeles and San Francisco, the matters were consolidated for the purpose of receiving evidence and for decision, were duly submitted, and are now ready for decision.

In Application No. 12402 California Transit Co. proposes to charge rates between Bishop and Lone Pine in accordance with tariffs now established by Owens Valley Transportation, Storage and Packing Company, locally, between Mojave and Lone Pine, as through rates between Mojave and Bishop, and as through rates between Los Angeles and Bishop applicant proposes rates in accordance with Exhibits D-1 to 4, inclusive, as filed with the application. The proposed time schedules

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are set forth in amended Exhibit "C," it being proposed to serve as intermediate stations between Mojave and Lone Pine the communities at Cinco, Freeman Junction, Little Lake, Haiwee and Olancha and such additional points as may be desired by the public, assessing therefor a rate of 7½ cents per mile with the provision that the fare so assessed shall not exceed the published fare from or to the next more distant tariff point. The equipment proposed to be used between Mojave and Lone Pine is that now used by applicant in its operation between Los Angeles and Bakersfield, via Mojave, together with such additional equipment from its system supply as used in its general transportation business.

Applicant relies as justification for the granting of the desired certificate upon the following alleged facts: (1) that there is no public transportation company operating as a common carrier of passengers between Mojave and Lone Pine; (2) that there is no direct method of transportation from points in California north of Los Angeles, including the whole of the Sacramento and San Joaquin valleys and San Francisco, to the territory herein proposed to be served between Lone Pine and Bishop; (3) that the only common carrier service available for the whole of said territory is that rendered by the Southern Pacific Company by one daily schedule between Los Angeles and Owenyo by its broad gauge service, and between Lone Pine and Bishop by a narrow gauge service, and that such rail service does not render direct service to the principal points affected by this application, the rail service being about two miles distant from Lone Pine, and thence to Laws, which is about five miles northeast of Bishop, and between such termini the existing rail service is similarly distant from centers of population; (4) that persons desiring to travel between points in the Owens Valley now served by the Owens Valley Transportation, Storage and Packing Company and points west of the mountain range north of Mojave will have, by the proposed service, an opportunity to receive direct transportation between Mojave and Lone Pine, rather than be compelled to traverse the distance and expend the time and the transportation expense on a circuitous trip through Los Angeles or other southern points; (5) that the proposed route is the most direct and practicable between the Owens Valley and the city of Los Angeles and its establishment will be a great advantage to the traveling public; (6) that applicant will be able to render the through service proposed as the proposed schedules between Los Angeles and Mojave will supplant the existing schedules and therefore will not incur additional operating costs, and also the present schedules of the Owens Valley Transportation, Storage and Packing Company will be supplanted by other schedules by reason of which satisfactory through and local service will be rendered without increasing the cost of operation, the

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only additional cost being for the conduct of service between Mojave and Lone Pine; and (7) that by reason of existing transportation conditions applicant is informed that many persons are now being transported over the route herein sought by applicant and between Mojave and Lone Pine by private conveyance, rent cars, and other expensive methods of more or less private transportation, and that as to such persons the proposed operation would be a direct conveyance and to whom the proposed operation is a public necessity.

Applicants Guy S. Alexander and L. B. Larson, as copartners doing business under the fictitious name of Bishop-Mono Lake Stage Line, propose under Application No. 13819 to charge fares and rates in accordance with a schedule marked "Exhibit B" as attached to and forming a part of the application, to operate on a schedule of three round trips per week, leaving Los Angeles on Tuesdays, Fridays and Saturdays and leaving Mono Inn on Sundays, Wednesdays and Saturdays, serving regularly the intermediate points of Pasadena, Clarks, Tom's Place at Rock Creek, Fobes Camp, Hans Loff's Place, Mammoth Hotel, Crest View Camp, Banington Saw Mill, Crater Camp, Boulder Lodge, Culver's Camp, June Lake Lodge, Cherokee Lodge on Gull Lake, Fern Creek Lodge, Carson's Camp at Silver Lake, Cain Ranch, Farrington Ranch, Leevining and Tioga Lodge. Applicants also propose to serve the following intermediate points on call for the receipt or delivery of passengers: Hilton Lakes, Whitmore Tubs, Rymer's Camp at Convict Lake, Tamarack Lodge, Crystal Craig, Wildrye Camp, W. O. W. Camp, Camp High Sierra, and Highway Stops. Operation is proposed during the tourist or vacation season, extending approximately from June 15 to September 15 of each year. The equipment proposed to be used by applicants consists of one 11-passenger Pierce Arrow bus and such other additional equipment as may be justified by the demands of traffic.

Applicants rely as justification for the granting of the desired certificate on the following alleged facts: (1) that there is no direct transportation service of any kind now operating between Los Angeles or Pasadena and the mountain resort points now served by applicants and located between Bishop and Mono Lake; (2) that 75 per cent of the passenger traffic anticipated and for which the through service is requested consists of traffic to or from the Los Angeles City Playgrounds known as Camp High Sierra to which passengers travel on tickets purchased through the Playground Department of the city of Los Angeles and which transportation has heretofore been contracted for by said Los Angeles Playground Department; and (3) that numerous requests have been received by applicants from the general public requesting the establishment of the proposed through service from Los Angeles and Pasadena as an extension of service now and heretofore

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performed by applicants between Bishop and Mono Inn and intermediate points.

In Application No. 13878, Geo. W. Wilkins and L. B. Larson, copartners operating under the fictitious name of Bishop-Mono Lake Stage Line, seek authority for passenger and express service to all intermediate points on their existing route between Bishop and Mono Lake and also for extension of passenger and express service as a portion of their existing operative rights to and from Whitmore Tubs, Rymer's Camp, Crystal Craig, Tamarack Lodge, and Los Angeles High Sierra Playground, such points being located from one to four miles from the main highway and are proposed to be served on call. The additional intermediate points proposed to be served are Clark's Rock Creek Camp, Boulder Lodge, Culver's Camp, June Lake Lodge, Cherokee Lodge, Carson's Ranch, and Leevining.

Applicants rely as justification for the granting of the desired certificate upon the following alleged facts: (1) that the certificate under which applicants are at present operating was granted by the Railroad Commission's Decision No. 11722 on Application No. 8027, as decided February 27, 1923, and authorized the operation of automobile stage passenger and express service between Bishop and Cunningham (now known as Mono Lake) serving as intermediate points Rock Creek Station, Eaton's Ranch, Sumner's Ranch, Mammoth Camp and Cain's Ranch; (2) that applicants were of the opinion that because Application No. 8027 as filed contemplated the serving of any and all intermediate points it included such right and that only recently were they advised that the operative rights were restricted to the intermediate points as set forth in said Decision No. 11722; (3) that the territory served consists of seasonal resorts and since the granting of Application No. 8027 there have been various changes in names and location of resorts, slso a number of new resorts have been established at points directly intermediate on and at points from one to four miles from the main traveled highway; (4) that applicants have at all times rendered service to the directly intermediate points and to the off-highway points. such service having been rendered on call; and (5) that there is a public necessity for the continuation of the intermediate and off-highway service.

W. L. Smith, automobile dealer; O. S. Brock, bank cashier; C. B. Culver, sporting goods dealer; E. L. Ray, garage owner; Joseph Edward Riley, garage and automobile dealer; Geo. C. Keough, former resort owner, and Mrs. Margaret Gilbert, hotel operator, all residents of Bishop, testified in behalf of applicants proposing through service from Bishop to Los Angeles. It appears from the testimony of these witnesses that frequent inquiry is made for through service between Bishop and Los Angeles; that the majority of Bishop residents and

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visitors use their own cars or the stage service of the Owens Valley Transportation, Storage and Packing Company between Bishop and Lone Pine in their trips between Bishop and Los Angeles; that express service, especially on small shipments, is not satisfactory when routed all rail, at least three hours less time being required on shipments from Los Angeles if a transfer to the stage line is made at Lone Pine; and that the long layover at Mojave is inconvenient for through passengers using the rail facilities as is also the transfer to a narrow gauge mixed train operating between Owenyo and Laws, the nearest rail station serving Bishop. All these witnesses prefer the proposed through stage service, and would use it if authorized in preference to their own cars or the present existing public transportation. By stipulation, the testimony of Carl Keough, a rancher, Mr. Vonderkeid, operating Keough Hot Springs resort, and S. Williams, a merchant, all of Bishop, was received.

Peter Steffen, residing at Aberdeen and operating a general merchandise store, believes the proposed service to be necessary, having heard frequent inquiries and complaints from the public, the rail station being four miles from the community and no shelter facilities being available. Witness would also use the proposed service for express shipments in preference to traveling twelve miles to the rail station at Independence where agency facilities are available, the rail station at Aberdeen being a nonagency, where shipments are delivered at owner's risk and without protection from the weather, pilferage or theft.

E. J. Seymour, residing in Los Angeles, testified that he had recently taken over all the privately owned land in Mono National Park and was erecting a 50-room hotel, bungalows and cabins; that there was a need for the proposed transportation for laborers, citizens and guests of his resorts, and that an investment in excess of $200,000 was being made in his resort projects; that he is at present operating his own trucks in transporting his materials and supplies from Los Angeles. Witness does not use the train service for his trips, claiming that it is too slow and inconvenient, although would use the proposed stage service, if authorized, in preference to his own car, believing the proposed service to be a genuine necessity not only for his personal needs but for the guests of his resorts, he having accommodations for 350 guests and anticipating that 75 per cent of such number would patronize a stage service.

T. J. Yerby, residing at Tom's Place, Rock Creek, twenty-five miles north of Bishop, testified regarding inquiries received for through service from patrons who would prefer such transportation rather than the use of their own automobiles; that the present rail transportation

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was not satisfactory due to the delay at Mojave, the transfer at Owenyo and the desert trip by railroad on the east side of the Owens Valley.

G. W. Dow, residing at Lone Pine and in the hotel and lumber business, favored the establishment of through stage service. This witness operates three hotels in the Owens Valley and receives frequent inquiries from his patrons for through stage service, 75 per cent of the travel north of Lone Pine being destined to resorts north of Bishop.

Harry A. Culver, operating Culver's Camp on June Lake, testified that the establishment of through stage service from Los Angeles was desirable, the existing service having kept many people from visiting the mountain resort territory. Witness opens his resort on May 1st and closes in January and is of the opinion that any authorized stage service should operate until the latter part of September of each year.

Roy Carson, operating Carson's Camp on the June Lake road, testified he had heretofore received service from the Bishop-Mono Lake Stage Line, that such service had been satisfactory and an extension of such service to Los Angeles would be desirable, his patrons having complained of inconvenience and delay on the railroad portion of the trip. This witness has facilities for the accommodation of 70 guests and has handled 200 during the month of June, practically all coming to his resort from southern California points.

Miss Jean McCullough, in charge of the High Sierra Camp, operated by the Los Angeles Playgrounds Commission, favors the establishment of through stage service from Los Angeles for a seasonal operation of at least three months during the summer. This camp is open from 10 to 11 weeks during the summer and is patronized by families who are residents of the city of Los Angeles and who arrange for their vacations in the High Sierra Camp through the Board of Playgrounds and Recreation of that city. Many of the users of the camp request stage transportation and object to the rail portion of the trips by reason of the time consumed, long delays at Mojave and the changes at Owenyo and Laws.

Frederick G. Leonard, residing at Los Angeles, testified he was formerly a member of the Board of Playgrounds and Recreation of the city of Los Angeles, having been chairman of such board for eight years; that he had made many trips to the high Sierra and was fully familiar with the High Sierra Camp at Mammoth Lake, the survey having been completed in 1922, the work of construction being commenced in 1923. During the first season the camp was opened for the residents of Los Angeles it had a capacity of 50 and has been enlarged until its present capacity is 90. This witness has always used his own automobile on his trips from Los Angeles, preferring to do so as the present public transportation service is not satisfactory, the present train service being poor and any through stage service

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offered in substitution being preferable. Witness would have used a through stage service at least five times during the past year in preference to his own car.

Lloyd B. Austin, operating Tamarack Lodge and the owner of Switzerland, testified the proposed through stage service would be a material benefit to his resorts and also to others in the territory north of Bishop, that prospective patrons and guests refuse to make the trip when advised of the existing transportation facilities, and that the class of patronage seeking recreation and vacations will not use the type of transportation now available preferring to go to other resorts and other localities where transportation difficulties are not present. B. G. Johnson, proprietor Crystal Craig Lodge, Lake Merriam; Mrs. Elizabeth W. McKee, of Cherokee Lodge, June Lake, and M. E. Troxel, operating a garage and service station on the June Lake cutoff, were witnesses whose testimony was stipulated to be substantially the same as that of witnesses Austin and Carson.

Wallace D. McPherson, proprietor of Mono Inn on Mono Lake, testified as to satisfactory passenger and express service rendered by the Bishop-Mono Lake Stage Line during the past five years; that the proposed through stage service to Los Angeles would be a material advantage to all Mono County resorts and would provide an adequate connection at Mono Lake for a through route to Bridgeport, Minden, Reno and Nevada points; that frequent inquiries were made at his hotel for stage transportation through to Los Angeles, and that the establishment of through service would result in new business for resorts and enable tourists and vacationists to return via Yosemite or via Nevada or Lake Tahoe, and also passengers originating over such routes to reach Los Angeles via the scenic highway on the easterly side of the Sierra. J. B. Craig, representing W. W. Cunningham, owner of Mono Lodge, testified substantially as did witness McPherson regarding the benefits to accrue to Mono County resorts by the establishment of a through stage line to Los Angeles.

C. A. Tripp, proprietor Hotel Mojave; C. W. Townsend, justice of the peace; K. Hucken of Kingston Hotel; J. F. Freed, bookkeeper in department store; V. D. Beane, postmaster and president of Mojave Chamber of Commerce; B. F. Foster, proprietor of a rooming house, and Andy Smith, garage proprietor, all of Mojave, testified in favor of the establishment of stage service between Mojave and Lone Pine. These witnesses testified that many complaints were made by travelers regarding the Southern Pacific rail service, especially as to the layover at Mojave both on north and south bound trips; that frequent inquiries were made regarding stage service to points in the Owens Valley; that by reason of the long wait between trains passengers, particularly women with children, secured rooms at hotels or lodging houses; that

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the present leaving time of northbound trains was very inconvenient; that travelers frequently engaged private machines at Mojave rather than wait long intervals for train service into the Owens Valley, and that the establishment of the proposed service would enable express shipments of automobile parts, meats and perishables to be promptly forwarded.

The Mojave Chamber of Commerce by its formal resolution, filed as an exhibit herein, endorses the granting of a permit for a permanent stage line between Mojave and Bishop.

Fred A. Alley, a resident and automobile dealer of Palmdale, and president of the Palmdale Chamber of Commerce, favors the establishment of auto stage service between Los Angeles and Owens Valley points, believing that the public needs such service in replacement of the present inadequate passenger service available by the railroad. Similar testimony was given by F. J. Fehrensen, a druggist of Palmdale and a member of the advisory board of the Bank of Italy for Palmdale and Lancaster.

M. H. Rowell, residing at Lancaster and principal of the Lancaster High School, testified as a representative of the Lancaster Chamber of Commerce and in favor of the establishment of the proposed stage line from Lone Pine to Mojave enabling through stage service to be rendered between Bishop and Los Angeles. School children living on the proposed route attend the Lancaster Union High School, some living as far distant as Lone Pine, and the transportation needs of these children would be better cared for, and the proposed service would be a material benefit to the entire territory served.

W. S. Webb, operating a garage and general merchandise business at Rosemond, testified the proposed service would be of advantage in the handling of emergency express shipments of automobile parts, several instances having occurred where replacement parts had been furnished by him to tourists who had experienced automobile trouble between Lone Pine and Mojave and who were required to wait for deliveries by the present rail service.

Rudolph Hagen of Ricardo, Red Rock Canyon; Mrs. R. W. Van Dyke of Homestead Service Station, and Karl Bruno of Lone Pine testified as to the need of auto stage service for points intermediate between Lone Pine and Mojave and the convenience which would be afforded for the transportation of passengers. By stipulation the testimony of Mr. Kessinger of Traveler's Rest, near Indian Wells; Mr. West, residing near Cinco, and Mr. Sterling, residing at Linnie, north of Indian Wells, was to be considered similar to that of the above mentioned witness.

Geo. F. Brown and Frank Zwack, merchants at Olancha, testified as to the desire of their community for the establishment of stage service

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between Mojave and Lone Pine. Frequent inquiry is made by the public for more satisfactory service than is afforded by present existing public transportation. Express packages now received at the Southern Pacific station at Olancha and which now require a local delivery charge of 25 cents per package would be delivered direct and the present delay at Mojave would be eliminated.

A. Ransom, engaged in the hotel business at Big Pine, testified regarding daily inquiries made for through stage service; that his patrons would not patronize the narrow gauge line of the Southern Pacific Company, and that the proposed stage schedules and rates were satisfactory. The community at Lone Pine is served by the Southern Pacific station of Zurich, 2½ miles distant.

J. K. Keneely, employed in the legal department of the Bureau of Water and Power of the city of Los Angeles, testified that while no official action had been taken by his organization it would be of advantage to have daily stage service into the Owens Valley; that proposed new construction work would necessitate additional service, and that the rates and schedules proposed appeared to be satisfactory.

E. D. Melcher, secretary of the Transportation Committee of the Pasadena Chamber of Commerce, testified that he was instructed by his organization and by the Altadena Chamber of Commerce to investigate the conditions regarding through service to the Inyo and Mono County resort sections. His investigation with resort owners disclosed that one-third the patronage originated in Pasadena. An average of from 30 to 40 inquiries per week, during the summer vacation season, are received regarding methods of reaching the Sierra country, by the information bureau maintained by the Pasadena Chamber of Commerce. This witness is of the opinion that the proposed through service serving Pasadena, is a necessity; that it would be patronized by many vacationists now using their own automobiles but who would prefer the facilities of a public carrier offering reliable passenger stage service, and that the proposed rates and service were satisfactory.

Henry C. Kline, proprietor of June Lake Lodge, testified his resort had a capacity of 100, and that frequent inquiries were received from residents of Los Angeles, Pasadena and Glendale for through stage service, such inquiries averaging 20 per week during the vacation season. Witness is now engaged in subdividing 339 acres as a vacation community, 330 lots of such subdivision having been sold, and in the development and sale of his property has transported patrons in his own automobile for the reason that no satisfactory through service was now available.

Robert J. Keating, a resident of Pasadena and vice president of the Isaak Walton League, an organization of 206 members residing in Pasadena, Altadena and La Canada, testified the proposed service was

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desired by his organization and that the proposed rates and service were satisfactory.

H. C. Pollock, Los Angeles passenger agent of California Transit Co., and formerly employed on the information desk of the Union Stage Depot at Los Angeles; Albert W. Carlisle, operating the Southern California Information Bureau in the Spring Arcade Building, Los Angeles; M. H. Seifrie, employed as information clerk at the Union Stage Depot, Los Angeles; J. Sturtevant, employed on the information desk of the B. H. Dyas Co., sporting goods dealers of Los Angeles, and C. E. Johnson, employed by the camp department of the Western Auto Company at Los Angeles, testified regarding the inquiries received for through transportation to Sierra fishing, hunting and vacation resorts. It appears that frequent inquiries are made from tourists, vacationists and others for a through service that will eliminate the present delays and changes now necessary by existing public transportation.

J. W. Bledsoe and Jas. E. Davis of Los Angeles, R. M. Palmer, Lamber P. Gagneare, and Chas. H. Holdson of Pasadena, all testified in behalf of a through auto stage service between Los Angeles and Mono County points north of Bishop, believing the proposed service to be a necessary one and a material relief from the existing delays.

L. A. Anderson, operating stage service between Mono Lake and Gardnerville, Nevada, via Bridgeport, testified as to inquiries received from his patrons for through stage service to Los Angeles and southern California points, and that any authorized service would be beneficial for the public and for the Mono resort territory. Similar testimony was presented by Jas. T. McAlee of Bridgeport, the operator of a stage line from Bridgeport to Cow Creek, via Sonora Pass.

The granting of Applications Nos. 10402 and 13819 is protested by Southern Pacific Company and American Railway Express Company.

Officials of the American Railway Express Company described the service and schedules available for the transportation of express between Los Angeles and Bishop and intermediate points and presented exhibits showing existing rates. The principal express movement is from Bakersfield and Los Angeles to points in the Owens Valley, there being but little outbound traffic. Seventy-five per cent of the express handled is perishable, much of which moves under ice. Agencies are maintained at all railroad stations where railroad agents are employed and also at Big Pine, Independence and Bishop, the latter points being located some distance from the railroad. It is the contention of this protestant that there is no necessity for additional express service between Los Angeles and Bishop; that adequate express facilities now exist, and that the volume of business now handled into the Owens

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Valley is decreasing. As illustrative of the trend of the express business the following figures were furnished showing gross receipts at the agencies of Lone Pine and Bishop for the years shown:

Year	*Lone Pine*	*Bishop*
1921	$10,862 00	$42,400 00
1922	7,351 00	40,511 00
1923	8,614 00	41,438 00
1924	8,983 00	36,190 00
1925	9,801 00	29,751 00
1926	9,361 00	28,765 00

Southern Pacific Company presented a number of exhibits showing fares and rates, passengers carried during representative periods, and other data as to schedules and accommodations available for the public.

T. G. Watterson, a retail dry goods merchant of Bishop and clerk of the board of trustees of that city, testified that the service of the Southern Pacific Company was satisfactory as was also the express service of the American Railway Express Company; and that business conditions in the Owens Valley were not good, there being a rapidly decreasing volume of retail trade due to residents leaving the territory. Witness in his trips to Los Angeles uses his automobile to Lone Pine and Southern Pacific service from such point to and from destination.

M. Q. Watterson, a banker and hardware merchant of Bishop and for forty years a resident of that city, testified that although on his trips to Los Angeles he used his own automobile he knew of no need for additional public transportation such as would be provided by a proposed stage line. Mr. Austin, a merchant and rancher, and Fred W. Hess, in the lumber and building material business, both of Bishop, testified as to satisfactory service now rendered by the Southern Pacific Company.

A resolution of the board of trustees of the city of Bishop, under date June 13, 1927, was received as an exhibit. This resolution recommends the denial of all applications and alleges that it is the unanimous opinion of the board that the present existing transportation facilities, both passenger and freight, are more than ample and sufficient to meet the needs of the community; that the business of Owens Valley is not sufficiently remunerative to support additional facilities which would result in impairment of existing service.

The schedules proposed by applicants show an elapsed time between Los Angeles and Bishop varying from 8 hours, 45 minutes to 20 hours, 15 minutes (the latter covering overnight stop at Lone Pine), the average schedule being 9 hours, 45 minutes. The Southern Pacific schedule, Los Angeles to Bishop (including stage trip between Laws and Bishop) requires 13 hours, 20 minutes northbound and 18 hours, 40 minutes southbound.

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A comparison of one-way and round-trip fares between Los Angeles and Mojave and the principal points proposed to be served is as follows:

Between Los Angeles and	California Transit		Bishop-Mono Lake Stage		Southern Pacific Company		
	One way	Round trip	One way	Round trip	One way	Round trip Season	Round trip 16 days
Lone Pine	$10 65	$18 50	------	------	$12 12	$19 50	$16 25
Independence	11 50	20 15	------	------	13 02	------	------
Bishop	14 55	26 00	------	------	15 60	26 30	22 30
Mammoth Lake	-----	------	$20 65	$28 60	------	34 50	32 25
June Lake points	-----	------	22 65	32 20	------	40 00	36 75
Tioga Lodge (Mono Lake)	-----	------	24 65	35 80	------	43 15	39 85
Between Mojave and							
Lone Pine	7 00	11 20	------	------	8 40	------	------
Independence	7 85	12 85	------	------	9 30	------	------
Bishop	10 90	18 70	------	------	11 88	------	------

NOTE.—Pullman fare is not included in Southern Pacific rates, the one-way Pullman fare being $2.50 for lower berth and $2 for upper berth.

Protestant Southern Pacific Company presented exhibits showing the traffic handled on its passenger trains serving the Owens Valley, and an abstract from such exhibits shows the following number of passengers carried:

Period	Between Los Angeles and Lone Pine	Independence	Bishop	All other points
Months of June and July, 1923	921	0	0	74
Months of June and July, 1924	954	0	0	76
Months of June and July, 1927	919	7	60	38

Period	Between Mojave and Lone Pine	Independence	Bishop	All other points
Months of June and July, 1923	133	0	0	33
Months of June and July, 1924	89	0	0	25
Months of June and July, 1927	111	0	11	90

Between local stations on Mojave-Owenyo Branch not included above

Months of June and July, 1923	60
Months of June and July, 1924	51
Months of June and July, 1927	254

From exhibits filed the estimated passenger revenue per train mile from trains Nos. 88 and 89, operating between Mojave and Owenyo for the period May, 1925, to August, 1927, inclusive, was 71 cents for train No. 88 and 81.46 cents for train No. 89.

The estimated total revenue, including passenger, baggage, express and mail revenue, per passenger train mile for the period from June, 1926, to August, 1927, inclusive, was 99.2 cents for train No. 88 and 97.6 cents for train No. 89.

The cost of branch line operation of the Mojave-Owenyo Branch was estimated by G. J. Elliott, a witness for protestant Southern

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Pacific Company, as being 81.45 cents per passenger train mile for the out-of-pocket expense, and $1.6967 for all expenses.

The record of the unoccupied space in the standard Pullman car operated on the Los Angeles-Owenyo run, northbound, for the period May 15 to June 15, 1927, inclusive, shows 53.9 per cent of the lower berths, 87.8 per cent of the upper berths, and 87.5 per cent of the drawing rooms, to have been unoccupied.

The service proposed parallels that of the Southern Pacific between Mojave and Bishop, the railroad being located east of the highway at distances varying from two to four miles from the communities served, stage transportation being necessary to reach the community at Lone Pine from Lone Pine station, to reach Independence from Kearsarge station, and to reach Bishop from Laws station. Broad gauge service exists between Mojave and Owenyo, a daily round trip service being available with standard Pullman accommodation. From Owenyo to Laws a narrow gauge mixed train service is operated daily. Due to the long layovers at Mojave and the change and delay at Owenyo, passengers destined to Bishop and points north thereof in Mono County, including all the vacation, fishing and resort territory, complain of the inconvenience caused by the necessary changes and delays.

We have given careful consideration to all the evidence and exhibits herein and while it appears that a through stage service as proposed would be desirable for the public wishing to travel to and from the resort country east of the Sierra and north of Bishop, and that a more expeditious service is desirable for the residents in the sparsely settled country between Mojave and Lone Pine as well as for the communities of Lone Pine and Bishop and intermediate between such points, that the establishment of such stage service would seriously affect the ability of the Southern Pacific Company to continue the present daily passenger and express service. The record herein shows that the service between Mojave and Owenyo is now being maintained at a substantial loss, and it is assumed that the service on the narrow gauge from Owenyo northerly is in a similar condition.

The through service proposed by the Bishop-Mono Lake Stage Company is a seasonal one, proposed to be operated during the months when peak travel of tourists and vacationists is available, and while extremely desirable from the viewpoint of resort owners and their patrons and the individual vacationist, would divert travel from the present authorized transportation company which must function throughout the entire year, and whose service remains available during the seasons when travel is light. The volume of business to and from the Owens Valley as at present existing and for the immediate future is not sufficient to justify the establishment and authorization of further

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public transportation. In reaching this conclusion we have not overlooked the record herein which contains many complaints as to the character of the existing service, such complaints indicating that the present service is in need of considerable improvement. The delays at Mojave should be eliminated by a rearrangement of train schedules. Trains between Mojave and Owenyo should be operated on schedule time, particularly as regards the northbound schedule as to which the record shows for the period July 1 to September 14, 1927, inclusive, a daily average delay in arrival at Lone Pine of 41 minutes, delays of over one hour duration being frequent. The service of the narrow gauge for passengers to and from Bishop receives but scant patronage, passengers preferring to patronize the stage line of the Owens Valley Transportation, Storage and Packing Company between Lone Pine and Bishop, thereby saving 30 minutes on the northbound trip as well as eliminating the inconvenience and delay caused by the transfer from the standard to the narrow gauge at Owenyo. The inconvenience of the narrow gauge mixed train service and transfer at Owenyo is accentuated for Bishop passengers and passengers destined to points north of Bishop when the northbound standard gauge train is late, as it results in arrival at unreasonable hours in the resort territory or the necessity of an overnight stopover at Bishop. That the conditions surrounding the Owenyo transfer are recognized and avoided by the traveling public is shown by the limited volume of traffic moving via such route, exhibits of the Southern Pacific Company showing practically no Bishop passengers, as evidenced by the following data:

	Between			
	Los Angeles and		*Mojave and*	
Period	*Bishop*	*Lone Pine*	*Bishop*	*Lone Pine*
June and July, 1923	0	921	0	133
June and July, 1924	0	954	0	89
June and July, 1927	60	919	4	111

Southern Pacific tariffs naming round trip rates to Mono County resort points specify routing via Lone Pine, Owens Valley Transportation Company, and Bishop-Mono Lake Stage Company, no routing via Laws and stage line to Bishop being shown. Through rates for one-way, round trip and excursion fares should be established by Southern Pacific Company with a connection at Lone Pine with the stage service of the Owens Valley Transportation, Storage and Packing Company.

We conclude from the record herein that the public convenience and necessity does not require the establishment of a through automobile stage line from Los Angeles to Bishop and Mono County points, nor between Mojave and Lone Pine as a separate service, or as a part of a through service between Los Angeles and Bishop; that there is not

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at this time sufficient business to justify the establishment of additional passenger and express transportation service over the routes herein proposed; that the continuation of existing rail transportation service is necessary for the public in Owens Valley; and that the rail service should be improved by the elimination of present delays at junction points and by the sale of through tickets connecting at Lone Pine with the stage service of the Owens Valley Transportation, Storage and Packing Company.

As to the transfer proposed in Application No. 13819 whereby Geo. W. Wilkins withdraws from the partnership of Geo. W. Wilkins and L. B. Larsen, operating under the fictitious name of Bishop-Mono Lake Stage Line, and Guy S. Alexander proposes to purchase the one-half interest of said Geo. W. Wilkins for the sum of $5,000 of which amount $2,000 represents the value of one-half of the equipment and $3,000 the value of one-half of the operative rights and good will of the business, the remaining partner L. B. Larson consenting to the transfer by joining in the application and by his approval of an agreement which is attached to and forms a part of the application; while no protestant appeared objecting to the granting of the proposed transfer of the one-half interest, there appear certain inequalities in the proposed agreement which in our opinion should be corrected and the matter of formal approval of the requested transfer will be the subject of a supplemental order herein when applicants will have filed a revised agreement satisfactory to the Commission.

In the matter of Application No. 13878, Geo. W. Wilkins and L. B. Larson as copartners operating under the fictitious name of Bishop-Mono Lake Stage Company seek authority to transport passengers and express to all points on the route between Bishop and Mono Lake and also to and from Whitmore Tubs, Rymer's Camp, Crystal Craig, Tamarack Lodge and Los Angeles High Sierra Playground and points intermediate to such termini; all such points being reached by diversions from the main highway between Bishop and Mono Lake.

Applicants allege that under the authority contained in Decision No. 11722 on Application No. 8027, as decided February 27, 1923, said certificate authorizing the operation of automobile service for the carriage of passengers and express between Bishop and Cunningham (now known as Mono Lake) and the intermediate points of Rock Creek Station, Eaton's Ranch, Summer's Ranch, Mammoth Camp and Cain's Ranch, it was assumed that authority was granted for any and all points that might be established on the main highway between Bishop and Cunningham (Mono Lake) and also for operation to camps and resorts which were then, and since have been, established on highways off the main highway at points from 1 to 4 miles distant from said

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main highway; that such unauthorized points have been served regularly when request was made or as an "on call" service; and that public convenience and necessity require the continuance of such service during the season when the through service on the main highway is being operated.

The new points proposed to be served are Clark's Rock Creek Camp, Leevining, and Mono Inn, all of which are located on the main highway and Rymer's Camp, Whitmore Tubs, Crystal Craig, Tamarack Lodge, Los Angeles High Sierra Playground, Boulder Lodge, Culver's Camp, June Lodge, Cherokee Camp and Carson's Camp, which are located off the main highway at varying distances.

Roy Carson, operating Carson's Camp on June Lake Road; Andrew Downs, operating Boulder Lodge; and B. A. Meacham, operating Fern Creek Lodge between Silver Lake and June Lake, testified as to satisfactory service rendered by applicants in the transportation of express and property to and from their respective camps and the necessity for such service being continued.

The granting of the application is protested by the Smith Automobile Company operating a seasonal freight service (from May 1 to October 1) between Bishop and Silver Lake and the intermediate points at Hans Loff's Rock Creek Station, Convict Crossing, Mammoth Hotel, Tamarack Lodge, Crystal Craig and June Lake.

The operative rights of the Smith Auto Company (a copartnership consisting of V. G. Smith and Irl S. Newlin) were granted by this Commission's Decisions Nos. 12468, 16996 and 17981.

Decision No. 12468 on Application No. 9223, as decided August 11, 1923, authorizes service

> as a common carrier of freight between Bishop and Mammoth Hotel serving Loff's Rock Creek Station and Convict Crossing as intermediate points during the period May 1st to October 1st of each year.

Decision No. 16996 on Application No. 12956, as decided June 28, 1926, authorizes

> the operation by V. G. Smith and I. H. Newlan, copartners, of an automobile freight transportation service between Mammoth and Crystal Craig and Tamarack Lodge and camping spots and other places located within four (4) miles on either side of the main traveled highway between Mammoth and Tamarack Lodge, said service to be given in connection with and as an extension of the automobile freight transportation service now being given by Smith and Newlan between Bishop and Mammoth.

Decision No. 17981 on Application No. 13516, decided February 8, 1927, authorizes

> automobile service for the transportation of freight between Mammoth and June Lake and Silver Lake, as an extension of and in connection with the service now being given by applicants between Bishop and Mammoth, said operation to be seasonal, namely, between May 1st and October 1st of each year.

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V. G. Smith, one of the copartners operating under the name and style of Smith Automobile Company, testified that his copartnership operated the United States mail contract between Bishop and Mammoth and hauled freight in connection with such mail contract; that there was not sufficient business available to justify the operation of two truck lines for the carriage of property; and that for 75 per cent of the season, a truck of one-ton capacity was ample to care for all the business. A driver for the Smith Automobile Company testified that over one ton was usually hauled on each northbound trip and that overloads, requiring additional trucks, were present about one-quarter of the time during the opening of the resort and camp season. But little freight is destined to Bishop, fuel wood being the majority of the back haul.

A comparison of the freight rates of the Smith Automobile Company and the present and proposed rates of applicant Bishop-Mono Lake Stage Company is as follows:

Between		*Smith Automobile Co.*	*Over 1 ton*
Bishop and	Rock Creek Station	$0 50 cwt.	--------
	Convict Crossing	75 cwt.	--------
	Mammoth	1 00 cwt.	$0 75 cwt.
	Tamarack Lodge	1 25 cwt.	1 00 cwt.
	Crystal Craig	1 25 cwt.	1 00 cwt.
	June Lake	1 25 cwt.	--------
	Silver Lake	1 30 cwt.	--------

		Bishop-Mono Lake Stage Company			
Between		*100 lbs. or less per cwt.*	*100 to 1000 lbs. per cwt.*	*1000 to 2000 lbs. per cwt.*	*2000 lbs. and over per cwt.*
Bishop and	Rock Creek Station, Whitmore Tubs, Rymer's Camp, Mammoth Lake, Boulder Lodge, Culver's Camp	$1 50	------	------	------
	June Lake Lodge, Cherokee Lodge, Carson's Ranch, Cain Ranch (Farrington's), Leevining, Mono Lake	2 00	$1 50	$1 25	$1 00
Mammoth and Camp	High Sierra, Tamarack, Crystal Craig, Boulder Lodge, Culver's Camp, June Lake Lodge, Cherokee Lodge, Carson's Camp	$1 50	------	------	------

From the evidence of resort owners and others using motor truck service for the transportation of property, it appears that the matter

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of rates is of slight consideration and that prompt service is the essential requirement. The Bishop-Mono Lake Stage Company offers and furnishes a daily service, the freight service of the Smith Automobile Company is a tri-weekly service, supplemented by additional service if the volume of traffic warrants. For material or supplies, if no urgency exists and the volume is sufficient to warrant the operation of a truck, patrons hire private trucks if the rates of either of the authorized carriers are thought to be more than the particular shipment will justify.

The authorized carriers, however, are required to furnish regular service during the short season and the rates, considering the territory in which the operation is given and the limited volume of seasonal traffic available are not considered unreasonable by the patrons of the contesting carriers.

During the hearings on these proceedings a question arose regarding the road which is a detour from the state highway between Bishop and Mono Lake, said road leaving the state highway at Cain Ranch and running southerly to Carson's Camp and Cherokee Camp on Silver Lake thence southeasterly serving June Lake and Culver's Camp, past Gull Lake to Boulder Lodge on June Lake and thence to a connection with the main state highway. By stipulation of counsel it was agreed that the Commission should make an investigation to determine if such road was a public highway and that the results of the Commission's investigation were to be considered as evidence herein. Our investigation does not show any acceptance of this road as a public highway by the county, but it does show that the road is and has been open at all times to public use and has been maintained through the efforts and assistance of the Forest Service of the United States Department of Agriculture, the county of Mono, the Southern Sierras Power Company and various individuals.

We are of the opinion that the record shows affirmatively a need for the continuance of passenger and express service to Clark's Rock Creek Camp, Boulder Lodge, Culver's Camp, June Lodge, Cherokee Camp, Carson's Camp, Whitmore Tubs (on call only), Rymer's Camp on Convict Lake (on call only), Los Angeles High Sierra Playground (on call only), Crystal Craig (on call only), Tamarack Lodge (on call only) and Leevining, and that a certificate authorizing such operation should be issued.

ORDER.

Public hearings having been held on the above entitled applications, the matters having been consolidated for the receiving of evidence and for decision, and having been duly submitted, the Commission being now fully advised and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order:

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The Railroad Commission of the State of California hereby declares that public convenience and necessity do not require the operation by California Transit Co., a corporation, of an automobile stage service as a common carrier of passengers, baggage and express, for compensation between Mojave and Lone Pine and intermediate points, or the operation of such automobile stage service between Los Angeles and Bishop as a part of its present existing service between Los Angeles and Mojave connecting with other points on its operative stage system; and

It is hereby ordered, that Application No. 12402 be and the same hereby is denied without prejudice.

The Railroad Commission of the State of California hereby declares that public convenience and necessity do not require the operation by Guy S. Alexander and L. B. Larson, as copartners operating under the fictitious name of Bishop-Mono Lake Stage Line, of an automobile stage line as a common carrier of passengers, baggage and express, for compensation between Los Angeles and Pasadena on the one hand and Bishop and Mono Lake and points intermediate thereto on the other hand; and

It is hereby ordered, that Application No. 13819, in so far as said application requests authority for the establishment of an automobile stage service as more particularly set forth in the preceding declaration be and the same hereby is denied.

It is hereby further ordered, that the decision of this Commission regarding the portion of Application No. 13819 requesting authority for the transfer of the one-half interest of George W. Wilkins in the partnership of Geo. W. Wilkins and L. B. Larson, operating under the fictitious name of Bishop-Mono Lake Stage Line, to Guy S. Alexander be deferred until applicants shall have filed herein an agreement of transfer satisfactory to this Commission and upon the filing of such agreement the matter will be cared for by supplemental order herein.

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Geo. W. Wilkins and L. B. Larson, copartners operating under the fictitious name of Bishop-Mono Lake Stage Line of an automobile stage service as a common carrier of passengers, baggage and express between Bishop and Mono Lake serving regularly the intermediate points of Clark's Rock Creek Camp, Boulder Lodge, Culver's Camp, June Lodge, Cherokee Camp, Carson's Camp, and Leevining and on call only, the points off the main highway at Whitmore Tubs, Los Angeles High Sierra Playground, Tamarack Lodge, Crystal Craig and Rymer's Camp on Convict Lake; and

It is hereby ordered, that a certificate of public necessity and convenience be and the same hereby is granted to Geo. W. Wilkins and L. B. Larson, copartners operating under the fictitious name of Bishop-

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Mono Lake Stage Line for the operation of an automobile stage line as a common carrier of passengers, baggage and express, for compensation between Bishop and the intermediate points on the main highway between Bishop and Mono Lake known as Clark's Rock Creek Camp, Boulder Lodge, Culver's Camp, June Lodge, Cherokee Camp, Carson's Camp and Leevining, and an on call service to the following points located off said main highway: Whitmore Tubs, Rymer's Camp on Convict Lake, Los Angeles High Sierra Playground, Tamarack Lodge and Crystal Craig, not as new and separate operation but to be supplementary to and in conjunction with the present operative rights of Geo. W. Wilkins and L. B. Larson between Bishop and Mono Lake and intermediate points, such rights being seasonal from June to October, inclusive, of each year, and subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed twenty days from date hereof.

2. Applicants shall file, in duplicate, within a period of not to exceed sixty days from the date hereof, tariffs of rates and time schedules, such tariffs of rates and time schedules to be those attached to the application herein, or rates and time schedules saisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the writtten consent of the Railroad Commission to such discontinuance, sale, lease. transfer or assignment has first been secured.

4. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

Geo. W. Wilkins and L. B. Larson, copartners operating under the fictitious name of Bishop-Mono Lake Stage Line, are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited by the number of rights which may be given.

For all purposes, other than hereinabove stated, the effective date of this order is hereby fixed as twenty days from the date hereof.

Dated at San Francisco, California, this tenth day of April, 1928.

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DECISION No. 19580.

IN THE MATTER OF THE APPLICATION OF THE PENINSULA RAPID TRANSIT COMPANY, A CALIFORNIA CORPORATION, FOR AUTHORITY TO RENEW MORTGAGE LOAN ON REAL PROPERTY.

Application No. 14481.

Decided April 10, 1928.

DEED OF TRUST—SECURITIES.—Peninsula Rapid Transit Company authorized to execute two deeds of trust and to issue its one-year 6 per cent notes in the amounts of $16,000 and $9,000.

J. E. McCurdy, for Applicant.

BY THE COMMISSION.

OPINION.

In this application, as amended, Peninsula Rapid Transit Company asks for an order authorizing it to execute two deeds of trust on real property and to issue two one-year 6 per cent notes; one for $16,000 and one for $9,000, for the purpose of renewing outstanding indebtedness.

Peninsula Rapid Transit Company is engaged in operating auto stages for the transportation of passengers between San Francisco and San Jose. It reports that heretofore in connection with its business it purchased two parcels of real property located in the city of Burlingame and executed in purchasing such properties and in constructing improvements thereon, two deeds of trust to secure the payment of a one-year 6 per cent note for $16,000 and a one-year 6 per cent note for $9,000. The deed of trust securing the $16,000 note is a lien on property 128 by 140 feet in dimension upon which, during 1917, there was erected a one-story reinforced concrete building used for office, machine shop and terminal purposes and the deed of trust securing the $9,000 note is a lien on property 50 by 128 feet in dimension and improvements consisting of a one-story reinforced concrete building, erected in 1922, which is used for shop purposes.

It appears that both notes were renewed from time to time, the last renewal of the $16,000 note being made on September 26, 1927, and of the $9,000 note on October 21, 1926. These renewal notes were not authorized by the Commission, but it appears that the failure of applicant to obtain such authorization was through inadvertance and with no intent to evade the provisions of the Public Utilities Act and the Auto Stage and Truck Transportation Act. When the necessity of obtaining such authorization was called to applicant's attention, it immediately filed this present petition.

ORDER.

Peninsula Rapid Transit Company having applied to the Railroad Commission for authority to execute deeds of trust and to issue notes,

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a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through such issue is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Peninsula Rapid Transit Company be and it hereby is authorized to execute a deed of trust substantially in the same form as that attached to the original petition herein, and also a deed of trust substantially in the same form as that attached to the amended petition herein, and to issue its one-year six per cent notes secured thereby in the principal amounts of $16,000 and $9,000, respectively, for the purpose of renewing outstanding indebtedness of like amount.

The authority herein granted is subject to the following conditions:

1. The authority herein granted to execute deeds of trust is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said deeds of trust as to such other legal requirements to which said deeds of trust may be subject.

2. Applicant shall keep such record of the issue of the notes herein authorized as will enable it to file, within thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted will become effective when applicant has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

Dated at San Francisco, California, this tenth day of April, 1928.

DECISION No. 19581.

J. BROMBACHER, DOING BUSINESS UNDER THE TRADE NAME OF "CALIFORNIA CAR BUILDING AND REPAIR COMPANY"

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY AND PACIFIC ELECTRIC RAILWAY COMPANY.

Case No. 2283.

Decided April 10, 1928.

RATES—RAILROAD—SWITCHING.—Defendant carriers ordered to cease and desist from demanding of J. Brombacher charges for the switching of privately owned freight cars from and to complainant's plant which are greater than the charges concurrently made for like movements to and from carrier's repair plants.

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RATES—RAILROAD—IN GENERAL.—A private car may have either the status of freight or may be an instrumentality of commerce. (*Proctor & Gamble* vs. *C. H. & D. Ry. Co.*, 19 I. C. C. 56. *Pacific E. & C. Co.* vs. *C. R. I. & P. Ry. Co.*, 56 I. C. C. 247.) If of the latter status, it must be employed in the carrier's service and is in fact a railroad car for which the carrier pays the owner or licensee thereof for each mile it travels in line-haul service. If the car is not in the carrier's service, it reverts to a private car and becomes subject to the applicable freight charges (*McCloud River Railway Co.* vs. *Southern Pacific Company*, 56 I. C. C. 287.)

RATES—RAILROAD—IN GENERAL.—Privately owned cars moving empty to and from repair shops are not in a carrier's service as instrumentalities of commerce when actually tendered and moved as ordinary articles of freight

RATES—REASONABLENESS—COMPARISONS—NECESSITY OF SIMILARITY.—Comparisons of switching charges for the movement of empty freight cars at other points, when the record is devoid of any showing as to the operating conditions prevailing in the terminal districts where applicable, or that the rates are intended to cover a comparable movement, are of little probative value.

DISCRIMINATION—PARTICULAR UTILITIES—RAILROADS.—Where defendant carriers do not solicit repair work on privately owned freight cars, but do occasionally accept such work when offered, the failure of defendants to assess tariff switching charges against privately owned cars moving to and from their repair shops places a car building and repair company at a disadvantage and results in an unlawful discrimination in violation of section 19 of the Public Utilities Act.

REPARATION—IN GENERAL.—In a complaint seeking reparation, where the charges assessed have not been actually collected, amended freight bills will eliminate the claimed excessive amounts.

B. H. Carmichael, F. W. Turcotte and *Paul Bateman*, for Complainant.
A. S. Halsted, J. P. Quigley and *E. E. Bennett*, for Los Angeles and Salt Lake Railroad Company, Defendant.
E. W. Camp and *C. K. Adams*, for The Atchison, Topeka and Santa Fe Railway Company, Defendant.
James E. Lyons, F. W. Mielke, L. C. Zimmerman, V. J. Andrus and *C. W. Bell*, for Southern Pacific Company, Defendant.
Frank Karr and *T. J. Day*, for Pacific Electric Railway Company, Defendant.

BY THE COMMISSION.

OPINION.

Complainant, an individual operating under the fictitious name of California Car Building and Repair Company, is engaged, among other activities, in the rebuilding and repairing of freight cars at Vernon, California. By complaint filed October 8, 1926, and as amended February 25, 1927, it is alleged that the charges published by defendants, effective June 17, 1926, for the switching of empty freight cars, privately owned, to and from complainant's plant, (a) were established in violation of section 63 of the Public Utilities Act; (b) were, are and for the future will be unjust and unreasonable, in violation of section 13 of the act; and (c) were, are and for the future will be discriminatory and prejudicial to complainant and preferential to defendants, in violation of section 19 of the act.

Reparation and just, reasonable, nondiscriminatory, nonprejudicial and nonpreferential switching charges for the future are sought.

Defendants, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company and Pacific Electric Railway Company, will hereafter be

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referred to as the Salt Lake, Santa Fe, Southern Pacific and Pacific Electric, respectively.

Public hearings were held before Examiner Geary at Los Angeles December 8, 1926, and October 18, 1927, and the case having been duly submitted and briefs filed, is now ready for our opinion and order.

Complainant's car repairing plant is located on the rails of the Salt Lake within the Los Angeles terminal switching limits of that company, and a part of its facilities are devoted to the repair and maintenance of privately owned freight cars. Most of the work performed is of a relatively minor nature, the record indicating that the average contract price is from $60 to $70 per car. Defendants will also render similar services in their own car repair shops, although no effort is made to secure the business.

Complainant's plant was established in November, 1925, but through a misunderstanding in card billing the empty cars no freight bills were issued for switching to and from the plant until subsequent to June 17, 1926, since which date defendants have assessed $3.60 per car for each movement over the individual lines, in accordance with item 873 of the Salt Lake Terminal Tariff 200-E, C. R. C. 289, and similar items in the terminal tariffs of the other defendants, making a round trip charge of $7.20 per car if origin and destination are points on the rails of the Salt Lake, and $14.40 per car if on the rails of any one of the other three defendants. The record shows that the major portion of the cars involved a movement over two lines and were therefore assessed $14.40 per car for the round trip.

Previous to June 17, 1926, there was no specific charge in the tariffs applicable to the services in issue, nor did defendants prior to this date assess or collect any charges. Subsequently "balance due" bills were sent to complainant, based on a charge of 34 cents per ton, minimum $7.20 per car, for the service performed by the originating carrier, plus $3.60 per car to the delivering carrier, a minimum charge of $14.40 per car for the round trip when confined to the rails of the Salt Lake, and $21.60 per car if originating at and returned to points on the rails of either the Santa Fe, Pacific Electric, or Southern Pacific. The items naming these charges in the terminal tariffs of defendants were applicable on "freight, carloads, when not incident to line haul, local or foreign," defendants contending the tariff items were lawfully applicable to privately owned freight cars moving for repairs.

A private car may have either the status of freight or may be an instrumentality of commerce. (*Proctor and Gamble* vs. *C. H. & D. Ry. Co.*, 19 I. C. C. 556, and *Pacific Engineering and Construction Co.* vs. *C. R. I. & P. Ry. Co.*, 56 I. C. C. 247.) If of the latter status it must be employed in the carrier's service and is in fact a railroad car for which the carrier pays the owner or lessee thereof for each mile

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it travels in line haul service both when under load and when empty, subject to certain rules for the equalization of the loaded and empty mileage, as provided in agent B. T. Jones Mileage Tariff No. 7-E, C. R. C. No. 15. If the car is not in the carrier's service it reverts to a private car and becomes subject to the applicable freight charges. (*McCloud River Ry. Co.* vs. *S. P. Co.*, 56 I. C. C. 287.)

In Procter and Gamble vs. *C., H. & D. Ry. Co., supra,* the federal commission, in considering a rule governing demurrage on private cars, quoted with approval the following:

> When a private car is employed by a carrier in lieu of its own equipment as an instrumentality of transportation, it is thenceforth not a private car but a railroad car; it does not regain its status as a private car until after transportation is concluded it leaves the carrier's service.

We are of the opinion from the facts of record in this proceeding that the cars here at issue at the time of their movement were not in the carrier's service as instrumentalities of commerce but were actually tendered to defendants and moved as ordinary articles of freight, hence the charges on "freight" were properly applicable prior to June 17, 1926. It follows therefore that complainant's allegation that the charge of $3.60 per car effective June 17, 1926, was established in violation of section 63 of the Public Utilities Act, is not sustained.

Defendants admit that the charges prior to June 17, 1926, were too high, and contend that the present $3.60 per car charge for each movement is just and reasonable considering the extent of the service rendered and the difficulties of performing the operations in the congested metropolitan terminal districts. Cars originating on the Santa Fe, Pacific Electric and Southern Pacific are handled through two classification yards, involving a haul of 12.17, 6.54 and 10.50 miles, respectively, and the cars originating on the Salt Lake pass through one classification yard, involving a haul of 3.33 miles. Thus, the round trip haul will vary from 6.66 to 24.34 miles, and these distances do not include the hauls necessary before reaching the classification yards of the respective carriers. Cost figures were submitted by operating witnesses for defendants purporting to show the average out-of-pocket cost of handling the cars here at issue from the Southern Pacific classification yard to complainant's plant is $7.79 per car, or an average of $3.89 for each movement. The unit cost on which this figure is computed is the average direct cost for performing a switching service on revenue earning cars in the Los Angeles terminal district on the rails of the Santa Fe, Salt Lake, and Southern Pacific.

Complainant contends the present charge is unreasonable to the extent it exceeds $1.35 per car for each movement, on the theory that defendant's switching charge from and to industry tracks when incidental to a line haul of a connecting carrier is $2.70 per car and the

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service performed in connection therewith usually involves a round-trip movement. However it was shown this charge is a reciprocal arrangement between carriers and only applies when line haul revenue is received, and it is therefore not comparable with the local services here involved, the charge for which is not predicated on the defendants' receiving a subsequent line haul.

Both complainant and defendants refer to switching charges maintained for the movement of empty freight cars at Chicago, Ill., Coffeyville, Kansas, and other points in the middle west. In some cases these charges are lower than those here at issue and in other cases the converse is true, but the record is devoid of any showing as to the operating conditions prevailing in the terminal districts where applicable, or that the rates are intended to cover a movement comparable with that from or to complainant's plan. We have repeatedly held that such a showing is of little probative value.

Upon this record we conclude and find that the present switching charge of $3.60 per car for each movement as published in Salt Lake Tariff No. 200-E, C. R. C. 289, item No. 873, and similar tariffs of other defendants, reading as follows:

Los Angeles, Cal.	Between industry or private side tracks and depot, industry, private side tracks or interchange tracks of connecting lines within switching limits.	Empty privately owned railway freight cars, on their own wheels, to be repaired or that have been repaired	$3.60 per car

is not shown to be either unjust or unreasonable. We are of the further opinion and find that the charge of 34 cents per ton, minimum $7.20 per car, for the originating carrier, plus 3.60 per car for the delivering line, was unjust and unreasonable to the extent it exceeded the charge of $3.60 per car established June 17, 1926. The record indicates defendants have not collected for the services rendered prior to June 17, 1926, therefore corrected freight bills should be rendered but not to exceed the charges accruing on the basis of $3.60 per car for each movement.

There now remains for consideration complainant's plea that the assailed tariff charges were and are unduly discriminatory, preferential and prejudicial.

The record shows that from October 3, 1925, to June 16, 1926, complainant repaired 40 cars, while during the period from June 17, 1926, to October 31, 1926, only 13 cars were repaired and the plant is now entirely closed, but the record does not indicate that this situation is attributable to the exaction of the switching charges. As previously stated, defendants do not solicit repair work on privately owned freight

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cars but they do occasionally accept this work when offered, and to this extent they are in direct competition with complainant.

Private cars moving empty to and from defendants' respective plants for repairs when not in carrier's service are subject to regular switching charges under the tariff provisions regardless of the named consignee, and if any movements of this character have taken place the tariff charges should be assessed and collected. The failure of defendants to assess tariff switching charges against privately owned cars moving to and from their repair shops has placed complainant at a disadvantage and resulted in unlawful discrimination and prejudice to complainant and undue preference to defendants, in violation of section 19 of the Public Utilities Act. An order will be entered requiring defendants to cease and desist from such unlawful violations of the Public Utilities Act and the tariffs.

Complainant seeks reparation, but since the charges assessed for the cars moved during the period from November, 1925, to June 17, 1926, were not actually collected on the basis of the published rate of 34 cents per ton, with a minimum of $7.20 per car for the initial carrier and $3.60 per car for each subsequent carrier, amended freight bills to the basis of the flat rate of $3.60 per car for the services rendered by each carrier will eliminate the claimed excessive amounts.

ORDER.

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that defendants, The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company, Los Angeles and Salt Lake Railroad Company and Southern Pacific Company, be and they are hereby directed to cease and desist within thirty days from the date of this order and thereafter to abstain from demanding, receiving or collecting from complainant, J. Brombacher, charges for the switching of privately owned freight cars moving on their own wheels from and to complainant's plant which are greater than the charges concurrently made for a like movement of privately owned freight cars moving on their own wheels from and to the repair plants of The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company, Los Angeles and Salt Lake Railroad Company and Southern Pacific Company.

It is hereby further ordered, that defendants, The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company, Los Angeles and Salt Lake Railroad Company and Southern Pacific Company, be and they are hereby authorized to waive collection of

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undercharges from complainant, J. Brombacher, for the switching of privately owned freight cars moving on their own wheels from and to complainant's plant in the amount of the difference between the charges lawfully applicable and those established effective June 17, 1926, in item 873 of Los Angeles and Salt Lake Railroad Company's Terminal Tariff No. 200-E, C. R. C. No. 289, and similar items in the terminal tariffs of The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company, and Southern Pacific Company.

Dated at San Francisco, California, this tenth day of April, 1928.

DECISION No. 19587.

CALIFORNIA HAWAIIAN MILLING COMPANY, INCORPORATED, A CORPORATION,

vs.

THE SOUTHERN PACIFIC COMPANY, A CORPORATION.

Case No. 2456.

Decided April 12, 1928.

REPARATION—Reparation awarded California Hawaiian Milling Company on shipments of barley moved from Woodland to Petaluma and Santa Rosa and milled in transit at San Francisco.

C. R. Schulz and Max B. Schulz, by *C. R. Schulz*, for Complainant.
James E. Lyons, for Defendant, Southern Pacific Company.
C. S. Connolly, for Albers Bros. Milling Company.
C. R. Schulz, for San Francisco Milling Company, George H. Croley & Company, Incorporated, and Consolidated Milling Company.
E. B. Smith, for Sperry Flour Company.

BY THE COMMISSION.

OPINION.

Complainant is a corporation organized under the laws of the State of California with its principal place of business at San Francisco and is engaged in the buying, selling and manufacture of grain, hay and products thereof. By complaint filed December 12, 1927, it is alleged that the rates assessed and collected by defendant on various carload shipments of barley moved during the period two years immediately prior to the filing of this complaint from Woodland to Petaluma and Santa Rosa and points between on the Northwestern Pacific Railroad Company, and milled in transit at San Francisco, were in excess of the legally published tariff rates, in violation of section 17 of the Public Utilities Act.

We are asked to find as to the rates legally applicable and for an order authorizing refund of the alleged overcharges. Rates will be stated in cents per 100 pounds.

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A public hearing was held March 15, 1928, before Examiner Geary and the case having been duly heard and submitted is now ready for our opinion and order.

Woodland is on the Sacramento Northern Railway and Southern Pacific Company; Petaluma on the Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company; and Santa Rosa on the Southern Pacific Company, Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company. Complainant's shipments of barley moved from Woodland via the Southern Pacific to San Francisco, there ground or rolled and the manufactured product then shipped to Petaluma and Santa Rosa and points between on the Northwestern Pacific. A rate of 17 cents was assessed and collected by defendant on this traffic, this being the commodity rate of 12 cents on the manufactured product from Woodland to Petaluma and Santa Rosa as shown in item 3510 of Pacific Freight Tariff Bureau Tariff 16-J, C. R. C. 386, which rate applies via Shellville Junction thence Northwestern Pacific, plus 5 cents for out-of-line or back haul charge at San Francisco. The rate from and to the same points via the Sacramento Northern to Sacramento, Western Pacific to San Francisco, thence Petaluma and Santa Rosa Railway to Petaluma and Santa Rosa, was also 12 cents as shown in item 6260 of Pacific Freight Tariff Bureau Tariff 34-L, C. R. C. 405 and corresponding items of previous issues. This latter rate is nonintermediate in application as to points of origin but is intermediate in application as to points of destination and the gist of the proceeding here before us is whether or not milling in transit was, under the tariffs, permissible at San Francisco. Upon the determination of this depends whether or not San Francisco should be considered as an intermediate point via the Southern Pacific under the provisions of note 2 of paragraph "A" of item 1390 of Southern Pacific Tariff 230-J, C. R. C. 3183, which provides in part as follows:

> The milling, cleaning, storing or otherwise treating in transit point will be considered as intermediate between point of origin and final destination, provided it is intermediate via any authorized route.

San Francisco would be physically an intermediate point between Woodland and Petaluma and Santa Rosa in connection with movement via the Sacramento Northern, Western Pacific and Petaluma and Santa Rosa Railway and complainant contends that in view of this San Francisco should be considered an intermediate point via the Southern Pacific by virtue of note 2 of paragraph "A" of item 1390. It is of evidence that the Western Pacific has on this traffic permitted milling in transit at San Francisco under its milling in transit arrangements as contained in Western Pacific Terminal Tariff 35-J, C. R. C. 245, but the defendant avers that milling in transit at that point would not be permissible under the provisions of the Western Pacific Transit

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rules account of the 12-cent rate via that line being nonintermediate in application as to points of origin. They rely upon item 1500 of Western Pacific Tariff 35-J, C. R. C. 245, which prohibited the privilege of milling in transit of grain in connection with rates nonintermediate in application, but the 12-cent rate via the Western Pacific was not in all respects a nonintermediate rate, it being intermediate in application as to points of destination. Item 1500 was amended November 10, 1927, so as to clearly provide that milling in transit would be permitted on grain moving under rates which were nonintermediate in application as to points of origin but intermediate as to points of destination, and upon this record it appears section 17 of the Public Utilities Act has not been violated by the Western Pacific in permitting the milling in transit at San Francisco. The milling in transit at San Francisco of shipments moving via the Western Pacific and Petaluma and Santa Rosa Railway from Woodlad to Petaluma and Santa Rosa at the same through rates as those available via the Southern Pacific creates, within the meaning of note 2 paragraph "A" of item 1390 of Southern Pacific Terminal Tariff 230-J, an authorized route via San Francisco and should be construed as authorizing the milling in transit of grain at San Francisco on traffic moving via the Southern Pacific from Woodland to Petaluma and Santa Rosa. There being no points between Petaluma and Santa Rosa common with the Petaluma and Santa Rosa Railway and Northwestern Pacific there would be no other authorized route via San Francisco to such points.

After consideration of all the facts of record and the matters and things involved, we are of the opinion and so find that in the application of note 2 of paragraph "A" of item 1390 of Southern Pacific Tariff 230-J, C. R. C. 3183, San Francisco is an intermediate point between Woodland and Petaluma and Santa Rosa. We further find that complainant has within two years prior to the filing of this complaint made shipments of barley from Woodland to Petaluma and Santa Rosa which were milled in transit at San Francisco; that it paid and bore the charges thereon and has been damaged in the amount of the difference between the charges paid and those that would have accrued at the applicable rates, and is entitled to refund of the overcharges with interest at the rate of 6 per cent per annum.

Complainant will submit statement of shipments to defendant for check. Should it not be possible to reach an agreement as to the amount of the refund the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

ORDER.

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and

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basing this order on the findings of fact and the conclusions contained in the opinion immediately preceding this order, which said opinion is hereby referred to and by reference made a part hereof;

It is hereby ordered, that the defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, California Hawaiian Milling Company, Inc., on shipments involved in this proceeding all charges it may have collected in excess of those found legally applicable in the opinion immediately preceding this order, together with interest at the rate of 6 per cent per annum.

Dated at San Francisco, California, this twelfth day of April, 1928.

DECISION No. 19589.

IN THE MATTER OF THE APPLICATION OF KEY SYSTEM TRANSIT COMPANY, A CORPORATION, FOR A CERTIFICATE DECLARING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE OPERATION OF MOTOR BUS SERVICE FROM THE CITY HALL, IN THE CITY OF OAKLAND, THENCE ALONG BROADWAY AND TENTH STREETS TO THE OAKLAND ESTUARY TUBE, THENCE THROUGH SAID TUBE TO WEBSTER STREET AND SANTA CLARA AVENUE, IN THE CITY OF ALAMEDA, AND RETURN OVER THE SAME ROUTE, ALL IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND FOR PERMISSION TO CONNECT SAID MOTOR-BUS SERVICE WITH ITS EXISTING MOTOR-BUS AND STREET CAR LINES AND TO UNIFY THE SAME, AND FOR AN ORDER AUTHORIZING APPLICANT TO DISCONTINUE AND ABANDON ITS STREET RAILWAY SERVICE OVER THE WEBSTER STREET BRIDGE AND ON WEBSTER STREET, AND ITS FRANCHISES AUTHORIZING SUCH OPERATION.

Application No. 14516.
Decided April 13, 1928.

CERTIFICATES—BUS SUBSTITUTION.—Key System Transit Company authorized to operate bus service between Oakland and Alameda through subway under the Oakland Estuary and to abandon street car service upon the commencing of bus service.

Brobeck, Phleger and Harrison, by *Herman Phleger* and *Frank S. Richards*, for the Applicant.
William J. Locke, for the City of Alameda.
A. N. Nelson, for the City of Oakland.
A. R. Linn, for the Alameda Chamber of Commerce.

DECOTO, *Commissioner.*

OPINION.

There is now being constructed and nearing completion by Alameda County under the Oakland Estuary, sometimes called the San Antonio Estuary, and between the cities of Alameda and Oakland, a tube and subway. The approach to this tube on the Oakland side is at Sixth and Harrison streets and on the Alameda side at Webster street.

The Key System Transit Company, hereinafter referred to as the "Key System," now operates the cars of its Santa Clara avenue line

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over the estuary on the Webster street bridge. This bridge will be removed upon the completion of the tube. The Key System has filed its application to abandon its street car service across the Webster street bridge and along Webster street in Alameda and substitute therefor a bus service from Fourteenth and Broadway in Oakland, through the tube to the intersection of Webster street and Santa Clara avenue in Alameda, with the same transfer privileges as are, at present, in effect upon street car lines and with a transfer to the Santa Clara line at its junction with Webster street in Alameda.

The Key System, for some years, has been faced with a steadily decreasing net return and during the year 1927, according to the testimony in this case, suffered a loss on all its operations of $682,428.17. The evidence shows that on its Alameda lines for 1927, it suffered a loss of $108,000 of which $62,000 was loss of return on invested capital and $46,000 an operating loss.

The cost of installing street car facilities through the tube and making the necessary rearrangements of the tracks so as to operate through the tube is estimated to be $310,000. This amount includes the paving of the area occupied by the track on Webster street.

In view of the peculiar financial and operating problems facing the Key System at the present time, it would seem unwise to throw upon it any great additional financial burden.

A ballot by mail was taken in Alameda between January 18 and 25, 1928, at which time the people were given an opportunity to express their preference for either a bus operation or a continuation of the street car operation. William Varcoe, the city clerk of Alameda, mailed out 14,882 return post card ballots, that number being the entire vote registration in the city of Alameda. Of these 1669 were returned undelivered, leaving 13,213 delivered. Out of this number 6639, or less than half, were returned. Of the ballots returned 3498 were for street car operation and 3141 for bus operations, there being a difference between the two of 357.

George A. Posey, county surveyor of Alameda County and chief engineer in charge of the planning and construction of the tube, who is probably the person most conversant with its possibilities, testified that in his judgment bus operation through the tube was the safest and best from every point of view. Standard clearances, as required by the rules of this Commission, can not be maintained if street cars are operated through the tube.

Twenty-one members of the board of directors of the Alameda Chamber of Commerce were and are now in favor of bus operation and fifteen out of the eighteen clubs, which were represented at the meeting of the Community Council of Alameda, held on March 30, 1928, were in favor of bus operations throughout the city of Alameda.

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Mr. Vargas, vice president of the applicant, testified that the transportation needs of the city of Alameda can be adequately handled with less cost by means of a bus operation than by means of a street car operation.

The officers of the Key System at the hearing expressed a willingness to put into the proposed bus operation the most modern and suitable equipment and testified further that the route proposed in the application was tentative only and that the permanent route would be determined after the consultation with the officials and other representative organizations of both cities.

It appears to the Commission that the proposed bus operation should not terminate at Santa Clara avenue in Alameda, but should be continued along Santa Clara avenue to High street and, in fact, wherever necessary in Alameda, to insure the people thereof adequate transportation.

The city of Oakland is growing to the north and to the east. Traffic, instead of being confined to Broadway and Washington street and the area between Twelfth and Fourteenth streets, should be spread out to meet the growing needs of wider distribution of this fast growing city. It is, therefore, suggested that the route of the buses in Oakland be north on Harrison street to Twentieth street, West on Twentieth street to Telegraph avenue, south on Telegraph avenue and Broadway to Ninth street and east on Ninth street to Harrison street and thence south on Harrison street to the entrance to the tube. Should Twenty-second street be opened and widened between Broadway and Telegraph the route might then be extended on Harrison street to Grand avenue; thence west along Grand avenue and Twenty-second street to Telegraph avenue and thence south along Telegraph avenue as above indicated.

From all the evidence, it appears that public convenience and necessity require the operation of buses through the Oakland Estuary tube by the applicant.

ORDER.

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted, the Commission being fully advised, and basing its order on the findings appearing in the opinion preceding this order;

It is hereby ordered, that a certificate of public convenience and necessity be and it is hereby granted to the Key System Transit Company to operate bus service from points in the city of Oakland to points in the city of Alameda through the tube or subway under the Oakland Estuary, sometimes known as the San Antonio Estuary, which tube or subway has it approach on the Oakland side at Sixth and Harrison streets and on the Alameda side at Webster street.

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It is further ordered, that upon the commencing of this bus service through the tube, that applicant may abandon and discontinue its street car service over the Webster street bridge and Webster street in Alameda and abandon the franchise under which such service is now rendered.

It is further ordered, that the route, over which the buses shall operate in Oakland and Alameda shall, prior to the beginning of operation thereover, be submitted to the Commission for its approval by supplemental order in this proceeding.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

For all other purposes, the effective date of this order shall be ten days from the date hereof.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19590.

IN THE MATTER OF THE APPLICATION OF THE EL DORADO POWER COMPANY, A CORPORATION, WESTERN STATES GAS AND ELECTRIC COMPANY, A CORPORATION, WESTERN STATES GAS AND ELECTRIC COMPANY OF DELAWARE, A CORPORATION, AND PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING EL DORADO POWER COMPANY, TO GRANT, ASSIGN AND TRANSFER ALL OF ITS PROPERTIES TO WESTERN STATES GAS AND ELECTRIC COMPANY AND AUTHORIZE WESTERN STATES GAS AND ELECTRIC COMPANY TO GRANT, ASSIGN AND TRANSFER ALL OF ITS PROPERTIES, INCLUDING THE PROPERTIES TO BE ACQUIRED BY IT FROM EL DORADO POWER COMPANY, TO THE PACIFIC GAS AND ELECTRIC COMPANY, PURSUANT TO A CERTAIN AGREEMENT DATED FEBRUARY 24, 1928.

Application No. 14520.

IN THE MATTER OF THE APPLICATION OF COAST VALLEYS GAS AND ELECTRIC COMPANY, A CORPORATION, AND PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING THE FORMER TO GRANT, ASSIGN AND TRANSFER UNTO THE LATTER THE PROPERTIES REFERRED TO IN THIS APPLICATION.

Application No. 14521.

Decided April 13, 1928.

TRANSFER—El Dorado Power Company, Coast Valleys Gas and Electric Company and Western States Gas and Electric Company authorized to transfer their properties to the Pacific Gas and Electric Company.

C. P. Cutten, for Applicants.

BY THE COMMISSION.

OPINION.

In Application No. 14520 the applicants, El Dorado Power Company, Western States Gas and Electric Company, Western States Gas and

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Electric Company of Delaware and Pacific Gas and Electric Company, ask the Commission to enter its order granting and conferring upon the El Dorado Power Company the necessary authority to grant, assign and transfer to the Western States Gas and Electric Company all the properties which the former has agreed to grant, assign and transfer to the latter, pursuant to the provisions of the agreement dated February 24, 1928, filed in said application as Exhibit "B"; also granting and conferring upon the Western States Gas and Electric Company all necessary authority to grant, assign and transfer to the Pacific Gas and Electric Company all the properties which the former has agreed to grant, assign and transfer unto the latter, pursuant to the provisions of the above mentioned agreement, dated February 24, 1928; and also authorizing the Western States Gas and Electric Company upon the granting, assigning and transferring to the Pacific Gas and Electric Company the properties referred to in this application to cease furnishing and supplying electric, gas and water service in the territory in which such Western States Gas and Electric Company is, and may be, furnishing and supplying electric, gas and water service by means of the aforesaid properties.

In Application No. 14521 applicants, Coast Valleys Gas and Electric Company, and Pacific Gas and Electric Company, ask the Railroad Commission to enter its order granting and conferring upon the Coast Valleys Gas and Electric Company all necessary authority to grant, assign and transfer to Pacific Gas and Electric Company all the property which the former has agreed to grant, assign and transfer to the latter, pursuant to the provisions of the agreement dated February 24, 1928, filed as Exhibit "B" in said application; also authorizing Coast Valleys Gas and Electric Company upon granting, assigning and transferring to the Pacific Gas and Electric Company the properties mentioned in this application, to cease furnishing and supplying electric, gas and water service in the territory in which said Coast Valleys Gas and Electric Company is, or may be, furnishing or supplying electric, gas and water service by means of said properties.

By Decision No. 18567, dated June 30, 1927, in Application No. 13805, the Commission, among other things, authorized the Pacific Gas and Electric Company to acquire and hold the following capital stock:

A. $20,000,000 par value of common stock of Sierra and San Francisco Power Company.
B. 751,500 par value of common stock of Western States Gas and Electric Company, a California corporation.
C. 3,253,200 par value of common stock of Western States Gas and Electric Company, a Delaware corporation.
D. 3,000,000 par value of common stock of Coast Valleys Gas and Electric Company.
E. 25,000 par value of the capital stock of the Del Monte Light and Power Company.

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The Commission by such decision also authorized the Pacific Gas and Electric Company to issue 260,000 shares of its common capital stock of the par value of $25 per share and of an aggregate par value of $6,500,000 as part payment for the stocks mentioned.

By Decision No. 19101, dated December 5, 1927, in Application No. 14208, the Commission authorized the Pacific Gas and Electric Company to acquire the outstanding 7 per cent preferred stock of the Coast Valleys Gas and Electric Company ($2,077,400); the outstanding 7 per cent preferred stock of the Western States Gas and Electric Company not owned by the Western States Gas and Electric Company of Delaware ($4,625,000); and the outstanding 7 per cent preferred stock of the Western States Gas and Electric Company of Deleware ($1,787,400). To acquire these stocks the Commission by that decision authorized the Pacific Gas and Electric Company to issue on or before June 30, 1928, not exceeding 339,592 shares of its first preferred 6 per cent stock of the par value of $25 per share and the aggregate par value of $8,489,800.

By Decision No. 19304, dated February 3, 1928, in Application No. 14387, the Commission authorized Pacific Gas and Electric Company to issue and sell on or before June 1, 1928, at not less than 96 per cent of their face value and accrued interest, $20,000,000 of its first and refunding mortgage 4½ per cent bonds due June 1, 1957, and use the proceeds from the sale of such bonds to pay in part for the properties of the Coast Valleys Gas and Electric Company and Western States Gas and Electric Company on the condition that those companies in turn use said proceeds to pay all or part of their outstanding bonded indebtedness.

The evidence submitted in connection with the proceedings now before the Commission shows that the Western States Gas and Electric Company has outstanding $6,750,000 of 7 per cent preferred stock and $3,981,500 of common stock, and that the Western States Gas and Electric Company of Delaware has outstanding $2,125,000 of 7 per cent preferred stock and $3,503,000 of common stock. Of the outstanding stock of these companies, the Pacific Gas and Electric Company owns or controls all except $175,900 of the Western States Gas and Electric Company 7 per cent preferred stock; $270,500 par value of 7 per cent preferred stock of the Western States Gas and Electric Company of Delaware, and $97,000 of the outstanding common stock of the Western States Gas and Electric Company of Delaware.

The Coast Valleys Gas and Electric Company reports outstanding $5,496,200 par value of capital stock segregated into $2,077,200 of

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7 per cent preferred, $419,000 of 6 per cent preferred, and $3,000,000 of common. The testimony shows that the Pacific Gas and Electric Company owns all of the outstanding common stock and all except $37,325 of the outstanding 7 per cent preferred stock of Coast Valleys Gas and Electric Company. It does not own any of the outstanding 6 per cent preferred stock of Coast Valleys Gas and Electric Company.

These stocks have been acquired by the Pacific Gas and Electric Company pusuant to the authority granted by said Decision No. 18567 and said Decision No. 19101. It is of record that as soon as the Pacific Gas and Electric Company has acquired the properties of Coast Valleys Gas and Electric Company, Western States Gas and Electric Company, El Dorado Power Company and Western States Gas and Electric Company of Delaware, the several companies will be dissolved and their assets distributed amongst those entitled to receive the same. It will be noted that by decision No. 18567 the Commission authorized the Pacific Gas and Electric Company to acquire $20,000,000 of outstanding common stock of the Sierra and San Francisco Power Company. The properties of that company have, since 1920, been operated by the Pacific Gas and Electric Company, under a lease. It is not at this time proposed to transfer the properties of the Sierra and San Francisco Power Company to Pacific Gas and Electric Company, though the purchase of the control of that company was financed in part through the issue of the $6,500,000 of common stock authorized by Decision No. 18567.

In Exhibit six a summary of the capitalization of Western States Gas and Electric Company, Coast Valleys Gas and Electric Company and Sierra and San Francisco Power Company, before the acquisition of the control by the Pacific Gas and Electric Company, and after refinancing by the Pacific Gas and Electric Company through the issue of the securities heretofore authorized by the Commission shows the following:

A. Before acquisition of control by Pacific Gas and Electric Company:

Bonds		$38,555,500 00
Preferred stocks		9,246,400 00
Seven per cent	$8,927,400 00	
Six per cent	419,000 00	
Common stock		27,254,500 00
Total		$75,056,400 00

B. After refinancing by Pacific Gas and Electric Company:

Bonds	$39,956,000 00
Preferred stock—6 per cent	8,489,800 00
Common stock	6,500,000 00
Bonds and stock	$54,945,800 00

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Pacific Gas and Electric Company purchase expenditures which have not yet been capitalized:	
Cash paid Byllesby's	$1,535,000 00
Cash advance to complete bond refunding	425,725 00
Cash expended or still required to complete retirement of preferred stock	756,600 00
Estimated cash required for purchase of minority common stock of Western States of Delaware	112,410 00
Subtotal	$2,829,735 00
Grand total	$57,775,535 00
Decrease in capitalization	$17,280,865 00

The refinancing was accomplished by the Pacific Gas and Electric Company through the issue of $6,500,000 of common stock; through the issue of 6 per cent preferred stock in exchange for the 7 per cent preferred stock of Coast Valleys Gas and Electric Company and Western States Gas and Electric Company, and Western States Gas and Electric Company of Delaware; the issue of $20,000 of 4½ per cent Pacific Gas and Electric Company bonds to refund $18,599,500 of Western States and Coast Valleys 5 per cent and 6 per cent bonds and notes and the payment of cash, as indicated above. While the refunding of the bonds increased the amount of bonds outstanding, it decreased the annual fixed charges by $247,800 (Exhibit four). Additional annual savings of $88,274 were accomplished by the refunding of 7 per cent preferred stock of the vendor companies, through the issue of Pacific Gas and Electric Company 6 per cent preferred stock. Because of the reduction in the annual fixed charges it is estimated that federal income taxes will be increased by $36,900 and that net savings due to refunding the stock and bonds mentioned will be $299,174. The annual saving in operating expenses is estimated by the Pacific Gas and Electric Company at $257,776 which, if added to the $299,174 makes a total saving of $556,950.

The Western States Gas and Electric Company owns all of the outstanding stock of the El Dorado Power Company. The Pacific Gas and Electric Company has agreed that it will, on demand, advance, and pay to, or upon the order of El Dorado Power Company, all sums of money required for paying the latter's debts and liabilities advance and pay to, or upon the order of, the Western States Gas and Electric Company:

a. All sums of money required for the redemption of said Western States Gas and Electric Company's outstanding bonds and notes.

b. All sums of money required for effecting the payment and discharge of all of the Western States Gas and Electric Company's other debts, obligations and liabilities.

c. All sums of money required for the payment of all expenses to be incurred in connection with the dissolution and liquidation of the

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affairs of the El Dorado Power Company and Western States Gas and Electric Company.

d. All sums of money required for paying the preferred stockholders of the Western States Gas and Electric Company (other than the Pacific Gas and Electric Company and Western States Gas and Electric Company of Delaware) the entire amount to which such preferred stockholders shall be entitled respectively upon the dissolution of the Western States Gas and Electric Company.

The Pacific Gas and Electric Company will, on demand, advance and pay to, the Western States Gas and Electric Company of Delaware:

a. All sums of money required for enabling said Western States Gas and Electric Company of Delaware to pay and discharge its debts, obligations and liabilities.

b. All sums of money required for the payment of all expenses to be incurred in connection with the dissolution and liquidation of the affairs of Western States Gas and Electric Company of Delaware.

c. All sums of money required for the payment to preferred stockholders of Western States Gas and Electric Company of Delaware (other than Pacific Gas and Electric Company) of the entire amount to which such preferred stockholders shall respectively be entitled upon the dissolution of the Western States Gas and Electric Company of Delaware.

d. The entire sum of money required for paying to common stockholders of the Western States Gas and Electric Company of Delaware (other than Pacific Gas and Electric Company) the sum of $40 for each share of the common stock of Western States Gas and Electric Company of Delaware, held by such common stockholders respectively; and

e. Such further sums of money, if any, as may be required for paying to common stockholders of the Western States Gas and Electric Company of Delaware (other than Pacific Gas and Electric Company) any amounts in excess of $40 per share which such common stockholders may establish, that they have a right to receive in the proceedings for the liquidation of the affairs of Western States Gas and Electric Company of Delaware.

The consideration which the Pacific Gas and Electric Company has agreed to pay for the properties of the Coast Valleys Gas and Electric Company is:

a. All sums of money required for the redemption of the Coast Valleys Gas and Electric Company's outstanding bonds.

b. All sums of money required for effecting the payment and discharge of all Coast Valleys Gas and Electric Company's other debts, obligations and liabilities.

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c. All sums of money required in payment of all expenses to be incurred in connection with the Coast Valleys Gas and Electric Company's dissolution and liquidation.

d. All sums of money required for the payment to preferred stockholders (other than Pacific Gas and Electric Company) of the Coast Valleys Gas and Electric Company, the entire amount to which they as such preferred stockholders will be entitled respectively upon the dissolution of the Coast Valleys Gas and Electric Company.

The statement on a preceding page shows approximately what the Pacific Gas and Electric Company must pay to acquire the properties.

We have considered the evidence submitted in these proceedings and believe that the transfer of the properties of the corporations mentioned, to the Pacific Gas and Electric Company, is in the public interest and that such transfer should be authorized.

ORDER.

El Dorado Power Company, Western States Gas and Electric Company, Western States Gas and Electric Company of Delaware and Coast Valleys Gas and Electric Company having applied to the Railroad Commission for permission to sell all of their properties to the Pacific Gas and Electric Company, and Pacific Gas and Electric Company having asked permission to purchase such properties, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the transfer of the properties of the corporations mentioned, to the Pacific Gas and Electric Company, is in the public interest and that Applications Nos. 14520 and 14521 should be granted as herein provided, therefore:

It is hereby ordered, as follows:

1. El Dorado Power Company, may, on or before July 1, 1928, grant, assign and transfer to Western States Gas and Electric Company all of its properties which the former has agreed to grant, assign and transfer to the latter, pursuant to the provisions of the agreement dated February 24, 1928, and filed in Application No. 14520 as Exhibit "B," and Western States Gas and Electric Company may, on or before July 1, 1928, grant, assign and transfer to the Pacific Gas and Electric Company all of the properties which it has agreed to grant, assign and transfer to said Pacific Gas and Electric Company, pursuant to the provisions of the agreement dated February 24, 1928, and filed in Application No. 14520 as Exhibit "B," which agreement said Pacific Gas and Electric Company, Western States Gas and Electric Company, Western States Gas and Electric Company of Delaware and El Dorado Power Company are hereby authorized to execute.

2. Coast Valleys Gas and Electric Company may, on or before July 1, 1928, grant, assign and transfer to the Pacific Gas and Electric

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Company all of the properties which the former has agreed to grant, assign and transfer to the latter, pursuant to the provisions of the agreement dated February 24, 1928, and filed in Application No. 14521 as Exhibit "B," which agreement said companies are hereby authorized to execute.

3. Upon the granting, assigning and transferring to the Pacific Gas and Electric Company of the properties referred to in Applications Nos. 14520 and 14521, the Western States Gas and Electric Company and Coast Valleys Gas and Electric Company may cease furnishing and supplying electric, gas and water service in the territories in which said companies are, or may be, furnishing and supplying electric, gas and water service by means of the aforesaid properties.

4. The consideration being paid by the Pacific Gas and Electric Company for the properties of El Dorado Power Company, Western States Gas and Electric Company, Western States Gas and Electric Company of Delaware and Coast Valleys Gas and Electric Company shall not be urged as a measure of the value of said properties for any purpose other than the transfer herein authorized.

5. Pacific Gas and Electric Company shall, as soon as available, file with the Railroad Commission a detailed statement showing the total consideration paid for the aforesaid properties.

6. Pacific Gas and Electric Company shall file with the Railroad Commission a statement showing the manner in which it will distribute to fixed capital or other accounts, the consideration which it will pay for the properties of El Dorado Power Company, Western States Gas and Electric Company, Western States Gas and Electric Company of Delaware and Coast Valleys Gas and Electric Company.

7. The authority herein granted will become effective upon the date hereof.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION NO. 19591.

IN THE MATTER OF THE APPLICATION OF MOTOR SERVICE EXPRESS, A CORPORATION, FOR PERMISSION TO INCREASE ITS RATES.

Application No. 14002.

Decided April 13, 1928.

RATES—AUTO TRUCK.—Motor Service Express authorized to adjust freight rates between Los Angeles and its Orange County Division and Coachella Valley Division.

RATES—REASONABLENESS—COMPARISONS—IN GENERAL.—Comparison of proposed truck rates with rail and other comparable rates for similar distances and movements is not necessary when the rates sought are not expected to produce a return upon the investment, and no competitor is protesting.

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RATES—PARTICULAR UTILITIES—AUTOMOTIVE TRANSPORTATION.—Increased rates were authorized when the additional revenue sought would not pay a return on the investment, but would equalize rates and relieve applicant of the burden of undue losses on its operation on two divisions.

H. J. Bischoff, for Applicant.
Rex S. Sawyer, for Associated Jobbers, Protestants.

BY THE COMMISSION.

OPINION.

Applicant herein seeks an order authorizing an increase of rates applicable to the business moving between Los Angeles and its Orange County division and its Coachella Valley division, which rates are now established by Tariff No. 1, effective May 24, 1926. Applicant also asks authority to establish Monroe's classification in lieu of the present rates applicable to its Orange County division. Its other divisions are its Riverside and Beach divisions, whose rates are not involved in this proceeding.

Public hearings herein were conducted by Examiner Williams at Los Angeles.

According to the testimony of applicant, verified by exhibits filed, the businesses now conducted by applicant over its Orange County division and Coachella Valley division have sustained losses. The Orange County division serves only Fullerton, Anaheim and La Habra. The Coachella Valley division serves all points east and south of Riverside, to and including Mecca, along the state highway.

In addition to the operating losses of these divisions, applicant is confronted with an additional burden in the payment of 5 per cent tax on its gross income to the State of California, due to the passage of a constitutional amendment imposing such tax.

The business of Motor Service Express (formerly Service Motor Express) has been conducted as a partnership by Fletcher & Tremble for many years, but was transferred to the corporation in February, 1926, by authority of this Commission. At that time, the corporation assumed the equipment and business and continued the rates in force. Experience of practically twenty months' operation resulted in the present application, because applicant urges that the business can not be conducted with any chance of profit unless the rates are altered. Applicant presented many exhibits at the hearing, and its books and exhibits were exhaustively examined by D. W. Davis, an accountant for the Railroad Commission. While there are minor matters of difference between the figures presented by Mr. Davis and applicant, the set-up as a whole is not contradictory in a substantial way.

According to the figures submitted by Mr. Davis, which applicant stipulated might be regarded as accurate, the gross revenue of applicant for its business in 1926 (including Riverside and San Bernardino and other points not in either of the divisions affected) was $175,977.39,

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while the total operating expenses amounted to $181,765.52 with the additional deduction for interest paid amounting to $1,275.90, leaving a net loss on the business for the year of $7,064.03. For the first nine months of 1927, a similar comparison shows a gross revenue of $149,614.58 and a total operating expense of $162,913.72, with additional interest deduction of $1,507.06 and showing a net loss of $14,806.20. The loss is calculated in this exhibit after depreciation and taxes are set up.

For the same periods the Coachella Valley division shows a revenue of $45,042.59. The increase in rates proposed for the service is approximately .1398 of the whole, and if applied on the business of 1926, would provide $6,296.95 additional revenue. For the nine months of 1927, the revenue was $39,426.19, and the increase, if applied on the basis of .1398, would be $5,502.78.

On the Orange County division the revenue for 1926 was $4,518.14. The proposed increase horizontally is approximately .42 of this amount and would bring additional revenue, if applied to 1926 business, of $1,897.62. For the nine months of 1927, the revenue was $4,592.80, and at the same rate of increase, .42, would have brought $1,928.98 additional revenue.

Applying the increase over the 1926 business would have brought the total revenue of the entire operation to $184,171.89, and the total expenses $183,041.42, leaving a net profit of $1,130.47. Following the same method, for the nine months of 1927, the total revenue would have been $157,046.14 as against total expenses of $164,420.78, showing a net loss for the period of $7,374.64.

It is obvious from the above figures that the rates charged upon the two divisions are completely out of line with the structure for the remainder of the system, and imposes upon the whole operation general losses. The figures presented by applicant show that previous to the acquisition of the business by the corporation, losses were sustained for several years, and that a great deal of difficulty was experienced in conducting the operation at all by reason of inability to meet pay rolls and maintenance. It will be seen that the application of the proposed rates will not, on the basis of present business, put the applicant in a position to make a profit upon its entire business; that there would still be a loss of approximately $850 per month. Hence the provision for additional rates providing additional revenue is not calculated by applicant to bring the operation to even a balance between cost and revenue, but will, if continued, show further losses. Applicant urges, however, its readiness to assume the new rates, and, by exercising economies and better methods and acquiring a larger volume of tonnage and operating better and different equipment capable of speeding up the service, to

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earn the profit that it expects eventually. One of the economies alluded to is the reduction of over head of applicant corporation approximately 50 per cent by reason of the fact that its business is housed with the business of the Coast Truck Line, owned by the same interests, and that it will be charged with not to exceed 50 per cent of the expenses it has heretofore been required to pay for terminal facilities, maintenance of equipment and the like.

The new rates proposed by applicant are set out in Exhibits "A" and "B" attached to the application. Exhibit "B" was amended to eliminate only rates for loads in excess of 20,000 pounds. The rates for the Orange County division, under the Monroe classification, appear to be not in excess of truck rates for similar service or for computing service. The rates for the Coachella Valley division likewise appear reasonable as compared with rail and other comparable rates for similar distances and movements. Comparison of these rates in this proceeding is not necessary, as the rates sought are not expected to produce a return upon the investment at this time, and no competitor is protesting.

Applicant's book accounts show an investment of approximately $142,000 in utility property, of which $93,656.75 is in motor equipment, $40,506.46 in land and buildings, $6,779.67 in furniture and fixtures, and $1,261.69 in miscellaneous equipment. Applicant estimated the value of its motor equipment at $99,203.92, but it appears from the testimony that some of the equipment carried in this account is obsolete and unfit to rehabilitate, and for that class of property $5,547.17 has been eliminated. No compensatory return on invested capital is sought in this proceeding.

The application was protested by the Associated Jobbers of Los Angeles, an association of shippers, through its secretary and rate expert, Mr. Rex S. Sawyer. This protestant, however, was not against the proposed increase in rates, but against the former practice of applicant of delaying shipments and failure to remit for C. O. D. collections. The protest was withdrawn after applicant gave assurance that the service and remittances would be prompt and the business conducted on a much better basis.

In view of the fact that the additional revenue sought is not applied for with the hope of paying a return upon the investment, but is intended rather to equalize the rates and relieve applicant of the burden of undue losses on its operation on two divisions, we believe the application for increased rates should be granted.

ORDER.

This application of Motor Service Express, Incorporated, having been duly heard and submitted, full investigation of the matters and

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things involved having been made, and basing its order on the findings and conclusions contained in the preceding opinion;

It is hereby ordered, that applicant, Motor Service Express, Inc., a corporation, be and it is hereby authorized, within sixty days from date hereof, to file the freight rates, rules, regulations and classifications as set forth in Exhibits "A" and "B" attached to the application, as amended; provided, however, that only the last two items of item No. 1 of section 13, page 8 of C. R. C. No. 1, effective May 24, 1926, be eliminated, the remainder of said section of commodity rates to remain in force.

It is hereby further ordered, that the tariffs issued in compliance with this order shall have the Commission's approval before becoming effective.

For all other purposes, the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this thirteenth day of Arpil, 1928.

DECISION No. 19592.

IN THE MATTER OF THE APPLICATION OF PENINSULAR RAILWAY COMPANY FOR AN ORDER GRANTING PERMISSION TO INCREASE RATES FOR THE TRANSPORTATION OF PASSENGERS ON THE LINES OF PENINSULAR RAILWAY COMPANY IN THE STATE OF CALIFORNIA.

Application No. 13583.

IN THE MATTER OF THE APPLICATION OF SAN JOSE RAILROADS FOR AN ORDER GRANTING PERMISSION TO INCREASE RATES FOR THE TRANSPORTATION OF PASSENGERS ON THE LINES OF SAN JOSE RAILROADS IN THE STATE OF CALIFORNIA.

Application No. 13584.

Decided April 13, 1928.

RATES—STREET RAILROAD—EXPERIMENTAL FARES.—Peninsular Railway Company and San Jose Railroads authorized to establish experimental fares on local lines of ten cents, with four tokens for twenty-five cents.

VALUATION—METHODS—HISTORICAL REPRODUCTION COST.—Applicant having stipulated that it would accept the Commission's Engineer's historical reproduction cost for the purpose of rate making, and this figure appearing to be reasonable and proper for a rate base, it was so considered.

INTERCORPORATE RELATIONS—ALLIED COMPANIES.—Where one of two closely related electric railways provides passenger service over the other company's tracks on a particular line at a considerable financial loss, in order to fulfill franchise obligations of the latter company, it was recommended that accurate accounting be kept of revenue and cost of service, and that the operating carrier be reimbursed for such losses as may be incurred.

RATES—STREET RAILROAD—IN GENERAL.—With one-man operation of cars the advantages accompanying a single coin fare and the elimination of the use of pennies is a distinct advantage, and reflects in better and faster service.

RATES—STREET RAILROAD—UNIFORMITY IN SINGLE CITY.—Two electric railways in the same community, being under the same management and same wage

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schedules, rates of fare on each should be the same, and it is desirable that the tokens of the two companies be interchangeable and good for transportation on the cars of either line.

Louis Oncal, *William F. James* and *Arthur B. Shoup*, for Applicants.
Archer A. Bowden, for the City of San Jose.

LOUTTIT, *Commissioner*.

OPINION.

In these proceedings authority is sought to increase fares for the transportation of passengers over the respective lines. Application No. 13583 was filed by the Peninsular Railway Company, while Application No. 13584 was filed by the San Jose Railroads.

Public hearings were held on both applications at San Jose on June 15 and October 19, 1927, and in San Francisco on November 5, 1927. At the first hearing, it was stipulated by the parties that the two applications should be consolidated for hearing and decision.

At the hearing in San Francisco on November 5th, the matters were submitted, on the condition that the applicants secure from this Commission a certificate of public convenience and necessity to exercise the rights and privileges of certain franchises for the operation of street cars granted by the city of San Jose and county of Santa Clara, respectively. Such certificate has been granted in Decision No. 19153, dated December 23, 1927, in Application No. 14217.

Both of these companies are engaged in the business of providing urban and interurban electric railroad service in and in the vicinity of the city of San Jose, the principal activity of the Peninsular Railway Company consisting of interurban service between San Jose, Palo Alto and Los Gatos and intermediate communities. This company also operates certain street car lines in the city of San Jose and its immediate vicinity. The principal service of the San Jose Railroads is street railway business in San Jose, although the company operates a suburban service to the district east of the city. Both companies are owned by Southern Pacific Company, through stock ownership, and are operated by the same officials and under the same local management, many of the employees furnishing service to both companies.

The existing local fare in the city of San Jose and the urban territory immediately adjacent is 6 cents, this fare being established on the lines of the San Jose Railroads under authority of Decision No. 5636, dated July 26, 1918, on Application No. 3788, and on the local lines of Peninsular Railway Company under authority of Decision No. 5624, of the same date, on Application No. 3789.

In December, 1920, both companies again filed applications for increases in rates; Peninsular Railway Company, Application No. 6413, and of the San Jose Railroads, Application No. 6414, which were dismissed by Decision No. 9823 and Decision No. 9824, respectively, dated November 29, 1921. In connection with these proceedings, the Com-

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mission's engineering staff made a complete investigation of the service, operating and financial conditions of the two companies and presented a report in evidence. In this report, certain recommendations were made which, with a few exceptions, have been carried out by the companies. Some of these recommendations which were not carried out or only partially carried out are as follows:

1. That the overhead percentage charged for store expense to San Jose Railroads by Peninsular Railway Company be increased from 6 per cent to 22 per cent;

2. That the rate for shop expense charged to San Jose Railroads by Peninsular Railway Company be increased from 6 per cent to 30 per cent;

3. That the rate of 4 cents per car mile charged Peninsular Railway Company for the use of San Jose Railroads' tracks be increased to 8 cents per car mile, and

4. That the operation of street cars on the so-called Alum Rock line of the Peninsular Railway Company be turned over to San Jose Railroads, Peninsular Railway Company to reimburse the latter company for any operating loss.

In the case of store expense, the rate was increased to 12 per cent, while shop expense has been increased to 20 per cent. The 8-cent per car mile charge for use of San Jose Railroads' tracks has been put into effect, and, in addition, Peninsular Railway Company now charges San Jose Railroads Company 8 cents per car mile for operation over Peninsular Railway tracks. With respect to the last recommendation, no attempt has ever been made to reimburse San Jose Railroads for the losses incurred in the so-called Alum Rock operation.

The principal matter to be determined in the present proceedings is the local urban fares to be charged in and in the vicinity of the city of San Jose and, as most of this local service is provided by the San Jose Railroads, consideration will first be given to the application of this company.

At the hearing on June 15th, the applicant presented a statement showing the estimated historical reproduction cost of its operative property, as of December 31, 1926, to be $1,571,841.65.

At a subsequent hearing, the valuation division of the Commission's engineering department presented a valuation as of December 31, 1926, showing the historical reproduction cost of the operative property on that date to be $1,497,288.06, or $74,553.59 less than the company figures. The company stipulated that it would accept the Commission's engineers' figure for the purpose of rate making and since this figure appears to be a reasonable and proper one for a rate base, it will be so considered.

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In support of its claim that increased fares are required, the company filed exhibits of operating revenues and expenses for each year from January 1, 1920, to December 31, 1926, which are summarized in the following tabulation:

Year	Operating revenue	Operating expense	Taxes	Railway operating income
1920	$401,586 53	$305,192 84	$21,911 19	$74,482 50
1921	410,771 89	332,689 10	24,377 21	53,705 58
1922	430,119 10	318,393 97	28,752 02	82,973 11
1923	419,749 15	345,374 10	28,849 35	45,525 70
1924	390,640 54	334,679 94	26,626 78	29,333 82
1925	389,550 94	343,033 55	25,426 18	21,091 21
1926	385,545 71	348,034 41	25,265 54	12,245 76

From this table it is apparent that the operating revenue is now showing a reduction each year, while the operating expenses have shown a slight increasing tendency, the result being that the railway operating income available for return is growing smaller each year. In 1926 this income amounted to $12,245.76, a return of less than one per cent on the historical reproduction cost. In this year, however, the company incurred considerable extraordinary maintenance expense and it is probable that the operating income in 1926 is not representative of the present results of operation by the company.

In Exhibit No. 28, the applicant has forecast a net railway operating income available for return of $29,500, which is approximately 2 per cent on the historical reproduction cost.

The transportation division of the Commission's engineering department made a study of the company's operations and reports that no material savings in operation can apparently be made as such changes as they believe should be made are not of sufficient importance to materially change the result. It appears that rather loose intercompany accounting relations exist between the Peninsular Railway Company and the San Jose Railroads and that a more stringent apportionment of the expenses incurred for the benefit of each company would result in savings to the San Jose Railroads.

This is particularly true in regard to the so-called Alum Rock operation, this being an instance where the San Jose Railroads provides passenger service over Peninsular Railway Company's tracks in order to fulfill the franchise obligations of the latter company. This service apparently is provided at a considerable operating loss to the San Jose Railroads. As before mentioned, it was the recommendation of the Commission's engineers in the former proceeding that the San Jose Railroads be reimbursed for this loss. The record in the present proceeding indicates that not only has Peninsular Railway Company failed to do this, but also that the company's officials have very slight, if any, knowledge as to either the amount of revenue collected annually

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on this line or the cost of providing the service. From such information as appears in the record, it is concluded that the revenue collected beyond the junction of King road and Santa Clara avenue, or on that portion of the Alum Rock line which is owned by the Peninsular Railway Company, does not exceed $4,000 per year. The books of the company are equally vague as to the cost of providing this service. It is definitely established, however, that San Jose Railroads pays the Peninsular Railway Company 8 cents for each car-mile operated over the six miles of track involved and this rental includes the maintenance and is presumed to include the power. It appears, however, that San Jose Railroads, during the greater portion of the time, furnishes the power not only for its own operation, but also for such freight movements as the Peninsular Railway Company may make over this track.

It appears from the record that the cost of providing service on this line is approximately $17,000 per year and the revenue is about $4,000, resulting in a loss of $13,000, annually.

It is recommended that an accurate accounting be kept of both the revenue and the cost of service on this line and that proper adjustment be made, by Peninsular Railway Company, reimbursing San Jose Railroads for such losses as may be incurred.

The following tabulation shows the estimated operating results of the San Jose Railroads:

Reference	*Year*	*Operating revenue*	*Operating expenses including taxes*	*Available for return*	*Rate of return H. R. C.*
Commission's Exhibit No. 33___	1927	$365,320 00	$332,145 00	$33,175 00	2.22%
Applicant's Exhibit No. 29___	1928	349,169 00	337,122 00	12,047 00	0.80%

If proper accounting for the losses incurred in operating the Alum Rock Line is made, the amount available for return will be increased nearly one per cent.

After considering all the recommendations for increasing revenue, together with those looking toward a reduction in operating expense, it is apparent that the company will still fail to earn the rate of return mentioned in the application. There is no evidence in the record as to any rate of fare, the establishment of which will yield to the company a rate of return in excess of five per cent.

It appears that a substantial increase in the amount available for return can be obtained by putting into effect a 10-cent fare with four tokens for 25 cents. It is estimated that such a fare structure will result in a rate of return to the company of approximately 5 per cent. Such a system of fares also carries with it the advantages that accompany a single coin fare, in that the number of change making transactions is reduced and the use of pennies entirely eliminated. With one-man operation of cars this is a distinct advantage and reflects in better and faster service.

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As stated before, the Peninsular Railway operates a certain amount of local service in San Jose and the immediate vicinity. Since the kind of local service offered is similar to that of San Jose Railroads and the two roads are under the same management and have the same wage schedules, it appears reasonable to assume that the cost of operation, at least as far as this strictly local service is concerned, is approximately the same. Therefore, the rates of fare prescribed for the San Jose Railroads should also apply to the city lines of Peninsular Railway and that company should also be authorized to put into effect these rates. It also appears that it would be desirable from the standpoint of public convenience that the tokens of the two companies be interchangeable and good for transportation on the cars of either line.

It should be understood, however, that the rates of fare above recommended are, to a certain extent, experimental. From the information at hand it appears that they will increase the revenue but not provide the return sought upon the value of the property. If, after they have been tried out for a reasonable length of time, it is found they are not proving satisfactory, means should be provided whereby the Commission can expeditiously make such changes as may appear proper. For this reason, the order that is entered at the present time in these applications should reserve the right to change by supplemental order the rates hereby prescribed.

The following form of order is recommended:

ORDER.

San Jose Railroads and Peninsular Railway Company, having made applications for an order granting authority to increase the rate of fares on their respective street car lines, public hearings having been held and the Commission being apprised of the facts;

It is hereby ordered, that applicants, San Jose Railroads and Peninsular Railway Company, be and they are hereby authorized to establish within thirty days from the date of this order schedules of fares as prescribed in Exhibits "A" and "B" attached hereto and made a part hereof by filing and posting tariffs in the manner designated in section 14 of the Public Utilities Act of the State of California.

The Commission reserves the right to make such further order or orders in these proceedings as it may deem necessary and desirable in the public interest.

The effective date of this order shall be twenty days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirteenth day of April, 1928.

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EXHIBIT "A."

SAN JOSE RAILROADS.

(1) One-way cash fare ten (10) cents between all points where the present one-way fare is six (6) cents.

(2) Four (4) tickets or tokens for twenty-five (25) cents between all points where the present one-way fare is six (6) cents, subject to the following conditions: Tickets or tokens shall be offered for sale on all cars and at the company's office, unlimited as to time of use and entitling the holder thereof to one continuous trip in the same general direction subject to the transfer privileges as shown in Item 9 of San Jose Railroads Local and Joint Passenger Tariff No. 4, C. R. C. No. 5.

(3) Fares to and from all other points will be the same as now shown in San Jose Railroads Local and Joint Passenger Tariff No. 4, C. R. C. No. 5.

EXHIBIT "B."

PENINSULAR RAILWAY COMPANY.

(1) One-way cash fare ten (10) cents between all points located between San Jose and Bascome avenue and between San Jose and Cherry avenue.

(2) Four (4) tickets or tokens for twenty-five (25) cents applicable between the points described in Paragraph (1) above, subject to the following conditions: Tickets or tokens shall be offered for sale on all cars operated between the above points and at the company's office, unlimited as to time of use and entitling the holder thereof to one continuous trip in the same general direction.

(3) Fares to and from all other points will be the same as now shown in Peninsular Railway Company's Local and Joint Passenger Tariff 6-C, C. R. C. No. 114.

DECISION No. 19594.

IN THE MATTER OF APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR AUTHORITY TO OPERATE MOTOR COACH LINES IN THE CITY OF PASADENA, CALIFORNIA.

Application No. 12820
(Supplemental).
Decided April 13, 1928.

CERTIFICATE—MOTOR COACH SERVICE.—Pacific Electric Railway Company authorized to operate motor coach service over eight routes in City of Pasadena. Certificate granted by Decision No. 17439 (28 C. R. C. 612) revoked.

Frank Karr and *C. W. Cornell*, for Applicant
Fred A. Stoehr and *Harold P. Huls*, Deputy City Attorneys, for City of Pasadena, Protestant.
E. D. Melcher, for Chamber of Commerce, City of Pasadena, Protestant
W. J. Wise and *M. A. Shipman*, for Better Service League of Pasadena, Protestant.
Harrison R. Raker, for East Washington Street Property Owners, Protestant.
Geo. E. Waldo, for San Rafael Heights Residents and Residents on Avenue 64, Protestants.
G. R. Langtree, for Green Street Improvement Association, Protestant.

BY THE COMMISSION.

FIRST SUPPLEMENTAL OPINION.

By this supplemental application, the Pacific Electric Railway Company proposes to make certain changes in its motor coach operation in and about the city of Pasadena from that authorized by Decision No. 17439 in the above numbered application.

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In the opinion in said Decision No. 17439, the following statement appears:

> While the record in this matter clearly shows that public convenience and necessity demanded some service of this character within the territory involved, it does not warrant the granting of a permanent certificate to the extent applied for. However, it was generally admitted that there is a duplication of service and a supply of service existing at the present time much in excess of that found necessary to serve other similar communities, but there is not sufficient data in the record to determine with finality the exact routes which should be permanently established.

The present application is in response to this suggestion.

Public hearings were held on the supplemental application before Examiner Williams at Los Angeles on June 13 and 24, 1927, at which time the matter was submitted. Before a decision was rendered on the supplemental application, certain changes in the routes and service of the Pasadena local motor coach lines were placed in effect following agreement between the board of directors of the city of Pasadena and the Pacific Electric Railway. Notice of these changes was properly filed with the Railroad Commission on August 30, 1927, in accordance with the requirements of condition (2) in Decision No. 17439, that such changes might be made under the condition mentioned for a period of not to exceed six months.

On January 11, 1928, submission was set aside and the matter was reopened for further hearing before Examiner Williams on February 3, 1928, at Pasadena, at which time the matter was duly submitted.

The record in this case indicates that the routes and service, as agreed upon by the city and the company, and which have been in effect since September 15, 1927, have proven satisfactory to both of these parties, and have satisfied the protestants who appeared at the initial hearings on the supplemental application, and no evidence was offered to oppose the granting of this application.

The record further shows that the local service in Pasadena has been reduced to some extent over that existing at the time of the first decision in this matter. Service during the late evening hours has been curtailed. Certain bus routes have been consolidated with consequent elimination of unnecessary duplication of service.

Passenger traffic manager, O. A. Smith, testified that although none of the bus lines are earning a fair return on the property investment, the company desired to continue their operation substantially along the present routes. It is proposed by applicant, however, to abandon service on California street between Hill avenue and San Marino avenue, this being the only change in routing from the agreed plan placed in effect September 15, 1927.

E. D. Melcher, special engineer for the city of Pasadena, testified that the service and routes now operated by the Pacific Electric were

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satisfactory to the city of Pasadena and that no objection was made to the abandonment of the California street line as proposed. No other protests were received relative to the routes.

Counsel for the city urged that the final decision in this matter contain a provision permitting routes and service to be changed upon a mutual agreement between the city and the company.. It appears desirable that in the future the city and company work out and submit to the Commission, for its consideration, changes in the routing of buses so as to best meet public convenience under prevailing conditions.

After carefully considering all the evidence in this proceeding, it appears that public convenience and necessity justify the granting of this application, with a provision that the routes over which certificates are granted are, to a certain degree, experimental in character and are subject to change by supplemental order upon receipt and consideration of application for such change.

ORDER.

Supplemental application having been filed by the Pacific Electric Railway Company to make certain changes in its motor coach operation, as heretofore authorized by Decision No. 17439 of this Commission, public hearings having been held, the matter having been duly submitted and the Commission being now fully advised:

It is hereby found as a fact that public convenience and necessity require the operation by the Pacific Electric Railway Company of the motor coach lines in and about the city of Pasadena, as proposed by applicant; therefore,

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to the Pacific Electric Railway Company for the operation of motor coaches in and about the city of Pasadena over the following routes:

Route "A."

From Broadway and Colorado street, north on Broadway to Union street, west on Union street to Pasadena avenue, south on Pasadena avenue to Colorado street, east on Colorado street to Los Robles avenue, north on Los Robles avenue to Woodbury road; returning south on Los Robles avenue to Montana street, west on Montana street to Marengo avenue, south on Marengo avenue to Penn street, east on Penn street to Los Robles avenue.

Route "B."

Commencing at East Orange Grove avenue and Craig avenue, west and southwest on Orange Grove avenue to Colorado street, east on Colorado street to El Molino avenue, south on El Molino avenue to Center street, east on Center street to Lake avenue, north on Lake avenue to Delmar street, east on Delmar street to Wilson avenue, south on Wilson avenue to San Pasqual street, east on San Pasqual street to Hill avenue, north on Hill avenue to Charlevoix street, east on Charlevoix street to Sierra Bonita avenue, south on Sierra Bointa avenue to Rose Villa street, east on Rose Villa street to Meredith avenue, south on Meredith avenue to Oakdale street, west on Oakdale street to Hill avenue.

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Route "C."

Beginning at a point on Washington street, known as "Tierra Alta," immediately west of Santa Anita road, west on Washington street to Marengo avenue, south on Marengo avenue to California street, east on California street to Los Robles avenue, south on Los Robles avenue to Glenarm street, west on Glenarm street to South Pasadena avenue, south on South Pasadena avenue to State street, west on State street to Orange Grove avenue, south on Orange Grove avenue to Columbia street, west on Columbia street to South Pasadena avenue, north on South Pasadena avenue to State street.

Route "D."

From Broadway and Colorado street, north on Broadway to Union street, west on Union street to Pasadena avenue, south on Pasadena avenue to Colorado street, east on Colorado street to El Molino avenue; north on El Molino avenue to Highland street; east on Highland street to Woodbury road, west on Woodbury road to El Molino avenue, south on El Molino avenue to Highland street.

Route "E."

From Broadway and Colorado street, north on Broadway to Union street, west on Union street to Pasadena avenue, south on Pasadena avenue to Colorado street, east on Colorado street to Hill avenue, north on Hill avenue to Topeka street.

Route "F."

From Broadway and Colorado street, north on Broadway to Union street, west on Union street to Pasadena avenue, south on Pasadena avenue to Colorado street, east on Colorado street to Stevenson avenue, north on Stevenson avenue to Washington street, east on Washington street to Michigan avenue, north on Michigan avenue to Topeka street, west on Topeka street to Mar Vista avenue, south on Mar Vista avenue to Washington street.

Route "G."

Beginning at Allen avenue and Hyatt street, north on Allen avenue to Washington street.

Route "H."

Beginning at California street and Hill avenue, west on California street to Los Robles avenue, north on Los Robles avenue to Colorado street, west on Colorado street to Raymond avenue, south on Raymond avenue to California street, west on California street to South Grand avenue, south on South Grand avenue to La Loma road, west on La Loma road to San Rafael avenue, north on San Rafael avenue to Nithsdale road, west on Nithsdale road to Avenue 64, south on Avenue 64 to Adelaide place; also from the corner of La Loma road and Arroyo drive, north on Arroyo drive to California street, east on California street to South Grand avenue.

This certificate is subject to the following conditions:

1. Applicant shall file a written acceptance of the certificates herein granted within a period not to exceed twenty days from date hereof.

2. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned, unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

3. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under contract or agreement on a basis satisfactory to the Railroad Commission.

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It is hereby further ordered, that the certificates granted by Decision No. 17439, dated October 6, 1926, be and the same are hereby revoked and annulled.

It is hereby further ordered, that the certificated routes herein authorized are to be considered as experimental, subject, upon application, to change by supplemental order in this proceeding.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19596.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF ITS COMMON STOCK OF THE PAR VALUE OF TWO MILLION DOLLARS.

Application No. 14263.

Decided April 13, 1928.

SECURITY ISSUES—USE OF PROCEEDS.—San Diego Consolidated Gas and Electric Company authorized to use proceeds from the sale of $2,000,000 of common stock to reimburse treasury.

Chickering and Gregory, for Applicant.

BY THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

By Decision No. 19233, dated January 10, 1928, the Commission authorized the San Diego Consolidated Gas and Electric Company to issue and sell on or before December 31, 1928, at not less than par $2,000,000 of its common capital stock and to expend not exceeding $500,000 of the proceeds for the purpose of paying the outstanding note of $75,000 in favor of the Bank of Italy and of paying in part the outstanding open account indebtedness referred to in said decision, and through such payment permanently finance in part construction expenditures made prior to October 31, 1927.

The order of the Commission further provides that the company shall not expend any proceeds from the sale of the $2,000,000 of common stock in excess of said $500,000 until authorized to do so by subsequent orders in this proceeding.

On April 3d San Diego Consolidated Gas and Electric Company filed a supplemental petition in this proceeding asking authority to use the proceeds derived from the sale of the $2,000,000 of stock when, and as sold, for the purpose of first reimbursing its treasury to the extent that said proceeds may go for the uncapitalized construction expenditures shown upon Exhibit "C" attached to the supplemental petition,

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and after such reimbursement, use the proceeds to pay in part its indebtedness.

Applicant reports that it has issued to date none of the $2,000,000 of stock and that the $75,000 note in favor of the Bank of Italy, referred to above, was paid prior to February 29, 1928, through increasing the company's aggregate indebtedness.

As of February 29, 1928, San Diego Consolidated Gas and Electric Company reports assets and liabilities as follows:

Assets.

Property rights and franchises	$2,358,545 77
Construction expenditures	22,711,960 53
San Diego Gas and Electric Company expenditures	4,887,751 03
Subtotal	$29,958,257 33
Investments	1,500 00
Cash	444,537 59
Bond and note interest deposited	367,640 00
Notes receivable	34,270 17
Accounts receivable net	512,900 61
Materials and supplies	357,998 59
Fuel on hand	6,919 11
Unexpired insurance	26,764 89
Unbilled accounts receivable	16,000 00
Unamortized debt discount and expense	984,856 01
Unadjusted debits	8,231 45
Total assets	$32,719,875 75

Liabilities.

Common stock	$5,032,500 00
Preferred stock	6,292,500 00
Bonds	13,868,000 00
Accounts payable	287,770 21
Due to affiliated companies	1,425,917 22
Bond interest accrued	367,640 00
Taxes accrued	542,593 40
Preferred dividends accrued	73,412 50
Common dividends accrued	33,550 01
Consumers' deposits	86,224 84
Consumers' deposits for construction	340,479 51
Depreciation	2,696,022 14
Depreciation—transportation equipment	441,552 09
Operating reserve	73,068 98
Other reserves	73,775 50
Unadjusted credits	27,500 00
Surplus	1,057,369 35
Total liabilities	$32,719,875 75

In Exhibit "C" attached to the supplemental petition applicant reports its uncapitalized construction expenditures at $2,454,538.84. In determining this amount it deducted from its construction expenditures as of October 31, 1927, $3,026,332.08 cash received from depreciation reserve, amortization of debt discount and expense and surplus. In Exhibit "C" it makes a further deduction of $400,453.41 on account of credits to the depreciation reserve from October 31, 1927, to February 29, 1928.

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In its Exhibit "A" applicant estimates its 1928 construction expenditures at $4,550,544. In view of applicant's construction expenditures incurred to February 29, 1928, its estimated construction expenditures during 1928 and its current indebtedness, we believe that it is necessary that the company should be permitted to expend the proceeds obtained from the sale of the $2,000,000 of common stock for the purposes herein indicated. In our opinion the expenditures of such proceeds for the purposes stated are not in whole or in part reasonably chargeable to income or operating expenses, and this is not a matter in which a public hearing is necessary.

It is hereby ordered, that the San Diego Consolidated Gas and Electric Company be and it is hereby authorized to use the proceeds obtained from the sale of the $2,000,000 of common stock, the issue of which is authorized by Decision No. 19233, dated January 10, 1928, to reimburse its treasury on account of the construction expenditures referred to in Exhibit "C" attached to the supplemental petition filed on April 3, 1928, and shall, after such reimbursement, use said proceeds to pay indebtedness.

It is hereby further ordered, that the Commission's order in Decision No. 19233, dated January 10, 1928, shall remain in full force and effect, except as to those provisions of said order which may be inconsistent with this first supplemental order

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19597.

IN THE MATTER OF THE APPLICATION OF IMPERIAL UTILITIES CORPORATION, FOR PERMISSION TO INCREASE WATER RATES CHARGED CONSUMERS AT CALIPATRIA.

Application No. 14179.

Decided April 13, 1928.

RATES—WATER UTILITY.—Imperial Utilities Corporation authorized to increase rates for water service in Calipatria, Imperial County.

RETURN—OPERATING EXPENSES—EXPENSES CHARGEABLE TO OPERATION OR CAPITAL.—The cost of excavation necessary in connection with the regular cleaning of canals and sedimentation basins and the removal of silt therefrom should be allocated to operating and maintenance expense, and not included in an estimate of reproduction cost new.

VALUATION—TANGIBLES—INVESTMENT IN ADVANCE OF PRESENT NEED.—Any excess capacities of canals and sedimentation basins are not properly to be included in a rate base.

VALUATION—ASCERTAINMENT OF VALUE—REPRODUCTION COST NEW.—An estimate of reproduction cost new which contains no figure to cover accrued depreciation, includes an appraisement for expenses which should be allocated to operation and maintenance and which approximates closely estimated original cost, more than half of the system having been installed during a period of high prices, is not of such a nature as to be usable in connection with the development of a rate base.

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VALUATION—ASCERTAINMENT OF VALUE—ORIGINAL COST.—A fair and reasonable rate base was arrived at from an estimate of original cost, undepreciated, with lands at present value.

RETURN—ALLOWANCE FOR AMORTIZATION—ABNORMAL EXPENSE.—An abnormal expense in connection with the cleaning of settling basins of a water utility, not likely to occur annually, should be amortized over a period of years.

L. M. Burntrager and *A. L. Kent*, for Applicant.
H. C. Hopkins, City Attorney, for the City of Calipatria.

CARR, *Commissioner*.

OPINION.

This is an application by the Imperial Utilities Corporation requesting an increase in the rates charged for water service rendered to the residents of Calipatria, in Imperial County. Applicant alleges in effect that the present rates do not produce sufficient revenues to provide a fair return upon the capital invested in its water properties and asks that all rates now in effect be increased 20 per cent.

A public hearing in this matter was held at Calipatria after all interested parties had been duly notified and given an opportunity to appear and be heard.

This water system was installed in 1914 by the Imperial Valley Land Association to aid in the sale of lots in the townsite of Calipatria. In May, 1917, the system was purchased by applicant and consolidated for operation with other water systems owned and operated by it at Niland, Barstow and Wilmar. The schedule of rates now in effect is as follows:

	Per month
Tenement buildings, lodging houses or residences, 6 rooms or less, 1 toilet 1 bath and water for irrigating one lot not to exceed 60 x 150 feet in size	$2 50
Each additional room	10
Each additional bath, toilet or urinal	25
Horses, or cows, one	25
Each additional horse, or cow	15
Automobiles, each	40
Small stores and shops	2 50
Hotel, base rate	2 50
For each room having running water or bath	25
For all other rooms	10
Hotels with dining room in connection, an additional charge of	4 00
Restaurants and eating houses	4 00
Business blocks, and floor, not exceeding five offices	2 50
Each additional office	10
Stores, warehouses, butcher shops, confectionery shops, halls, billiar parlors, etc.	2 50
Drug stores and bakeries	2 50
Barber shops, one chair only	2 50
Each additional chair	25
Photograph galleries	2 00
Laundries	4 00
Lumber yards	5 00
Showers	50
Public baths, each	1 00
Public water troughs, each	1 50
Steam boilers or gas engines, each per M.D.	30
Soda fountains, in addition to base rate for stores, each	1 00
Cotton gins, for not more than six-stand gin	5 00
For each additional gin	40
Lime for building purposes, for each 100 square yards plastered	50
For each 1000 bricks laid	15
For all purposes per barrel lime	15
Cement for construction, each 100 feet construction work	20
Concrete curb, per lineal foot	20
Graded streets, water used in setting streets, per 100 lineal feet	1 00
Fire hydrants, each	1 00
Water for irrigation of lots at 1 cent per 100 square foot lot area.	

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Monthly Minimum Payments.

¾-inch meters	$1 00
1-inch meters	1 50
1½-inch meters	2 00
2-inch meters	3 00
3-inch meters	4 00
4-inch meters, or larger	5 00
	6 00

Monthly Meter Rates.

From	0 to	500 cu. ft., per 100 cu. ft.	$0 20
From	500 to	1,000 cu. ft., per 100 cu. ft.	18
From	1,000 to	2,000 cu. ft., per 100 cu. ft.	15
From	2,000 to	15,000 cu. ft., per 100 cu. ft.	12
From	15,000 to	100,000 cu. ft., per 100 cu. ft.	10
From	100,000 to	1,000,000 cu. ft., per 100 cu. ft.	09
From	1,000,000 to	4,000,000 cu. ft., per 100 cu. ft.	08
Above		5,000,000 cu. ft., per 100 cu. ft.	07

The water supply for this system is obtained from the Imperial Irrigation District, which diverts water from the Colorado River and delivers it to the company by canal. The water carries considerable silt, which is largely removed by sedimentation in four large basins having a combined capacity of 1,937,000 gallons. After chlorination, the water is pumped directly into the distribution mains and also into a 50,000-gallon steel storage tank located on a 75-foot tower. The company maintains a gas engine-driven pumping unit as stand-by equipment for emergency use. The distribution system consists of approximately 40,833 feet of mains varying from three-quarters to eight inches in diameter. On January 1, 1928, there were 344 service connections on the system, of which nine were metered and 63 inactive.

Applicant submitted testimony setting forth the capital invested as of June 30, 1927, based on reproduction cost new undepreciated, an estimate of the annual depreciation based on the straight line method, and a statement giving the operating expenses and revenues as shown by its books for the years 1924, 1925 and 1926, and as estimated for the year 1927. F. H. Van Hoesen, one of the Commission's hydraulic engineers, also submitted a report containing an appraisal of the properties based on the estimated original cost, an analysis of the costs of operation and maintenance for the years 1925, 1926 and 1927, and a depreciation annuity computed by the sinking fund method at 5 per cent. A comparison of the figures submitted in the above reports is shown as follows:

	By applicant	*By Van Hoesen*
Reproduction cost new as of June 1, 1927	$63,045 96	---
Estimated original cost as of January 1, 1928	---	$49,131 00
Annual depreciation (straight line)	4,810 21	---
Annual depreciation (5% sinking fund)	---	1,229 78
Operating expenses (1925)	9,492 12	9,492 12
Operating expenses (1926)	11,830 07	11,830 07
Operating expenses (11 months of 1927)	10,670 68	8,120 98
Operating expenses (estimated—future)	14,188 00	7,385 00
Operating revenues (1925)	9,645 55	9,645 55
Operating revenues (1926)	11,730 78	11,730 78
Operating revenues (11 months of 1927)	10,200 48	9,661 81
Operating revenues (estimated—1927)	11,630 00	10,569 00

In connection with the estimates of value mentioned above, it should be remarked that applicant's estimate of reproduction cost new includes

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an appraisement for excavation necessary in connection with the regular cleaning of canals and sedimentation basins and the removal of silt therefrom. Moreover, this estimate contains no figure to cover accrued depreciation, nor has applicant put forth any estimate of the "fair value" of its properties. This cost of excavation and removal of silt in connection with the cleaning of canals and sedimentation basins has, in the past, been allocated to operating and maintenance expense. This seems proper and such costs will be so allocated in the future. Any excess capacities of said structures are also not properly to be included in applicant's rate base, and, if we take into consideration the fact that more than half of applicant's distribution system was installed during the higher price period of the past ten years, the result is that applicant's reproduction new appraisal approximates closely the estimated original cost of the operating properties of this utility, including lands at present fair market value.

It is clear, therefore, that applicant's estimate of reproduction cost new is not of such a nature as to be usable in connection with the development of a rate base for this utility, and, after a careful consideration of the testimony adduced in this proceeding, I am of the opinion that a fair and reasonable rate base for present purposes may be arrived at from the estimate of original cost undepreciated, with lands at present value, as presented by witness Van Hoesen in the amount of $49,131. The figure will, therefore, be used for this purpose.

The testimony shows that the soil conditions in and about Calipatria seriously affect underground portions of the system, as a result of which the company has been forced to replace a large part of its distribution mains with types of pipe more resistant to soil action. It, therefore, appears that the annual depreciation allowance should be increased to $1,700, which appears to be reasonable in view of the conditions obtaining on this system.

The estimates submitted for the 1927 maintenance and operating expenses are somewhat at variance. This is due largely to differences in the items coving the cost of cleaning the settling basins and the general overhead expense incurred by the main office at Los Angeles. The testimony shows that, during the past year, there has been an abnormal expense in connection with the cleaning of the settling basins which is not likely to occur annually and should, therefore, be amortized over a period of years. At the present time, applicant operates all of its utility business from its main office at Los Angeles and allocates this expense to the various utilities in proportion to the gross revenues received. By this method, the Calipatria water system is charged 10 per cent of the total, which amounts to approximately $150 per month. It appears unreasonable to expect the present small number of consumers served by this plant to pay so large an amount for bookkeeping

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and general office expense and supervision. An allowance of $7,400 is considered reasonable for the annual operating and maintenance costs for the immediate future.

The revenues for 1927 are estimated by the Commission's engineer to be approximately $10,569 and were based on operations for a period of eleven months of the year. Applicant's estimate for 1927 revenues, while somewhat greater, was based upon six months' operations only and is, therefore, not as reliable. Based upon the findings set out above, the operations for the year 1927 have resulted in a net return of approximately 3 per cent on the investment. It is apparent that applicant is reasonably entitled to an increased schedule of rates.

This utility operates under unusually difficult and severe service conditions. The only available source of supply is from the Colorado River and water must be settled to remove the silt carriel in suspension. The canals and basins must be dredged and cleaned regularly and the material disposed of. Owing to the excessive heat, it is necessary to supply a greater quantity of water than would normally be required in other localities. The use of water under flat rates is a great advantage and convenience to the consumers in maintaining comfortable living conditions and, for this reason, it appears advisable that domestic service be maintained under the present unmeasured plan. The schedule of meter rates established herein is solely for the purpose of providing such a rate, should special conditions arise requiring the measurement of water.

A large portion of the consumers, through the chamber of commerce of Calipatria, have signified their willingness to pay an increase of twenty per cent over the present rates; however, the evidence indicates that such an amount is somewhat in excess of the increase warranted by the existing conditions. A somewhat lower schedule of rates is established in the following order and it is believed that said schedule will provide a fair and reasonable return upon the rate base herein found.

The following form of order is suggested:

ORDER.

Imperial Utilities Corporation, a corporation, having made application as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises:

It is hereby found as a fact that the rates now charged by Imperial Utilities Corporation for water delivered to consumers in Calipatria, Imperial County, are unjust and unreasonable in so far as they differ from the rates herein established and that the rates herein established are just and reasonable rates for such service.

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Basing its order upon the foregoing findings of fact and upon the statements of fact contained in the preceding opinion;

It is hereby ordered, that Imperial Utilities Corporation be and it is hereby directed to file with this Commission, within thirty days from the date of this order, the following schedule of rates to become effective for all water service rendered on and after the first day of May, 1928.

Monthly Flat Rates.

Tenement buildings, lodging houses or residences, 6 rooms or less, 1 toilet, 1 bath and water for irrigating one lot not to exceed 60 x 150 feet in size	$2 90
Each additional room	10
Each additional bath, toilet or urinal	30
Horses, or cows, one	30
Each additional horse or cow	15
Small stores and shops	2 90
Hotel, base rate	3 00
For each room having running water or bath	30
For all other rooms	10
Hotels with dining room in connection, an additional charge of	4 50
Restaurants and eating houses	4 50
Business blocks, and floor, not exceeding five offices	2 90
Each additional office	10
Stores, warehouses, butcher shops, confectionery shops, halls, billiard parlors, etc.	2 90
Drug stores and bakeries	2 90
Barber shops, one chair only	2 90
Each additional chair	30
Photograph galleries	3 00
Laundries	4 00 to 10 00
Lumber yards	6 00
Public baths, each tub	1 15
Each shower	60
Public water troughs, each	1 75
Steam boilers or gas engines, per horsepower	35
Soda fountains, in addition to base rate for stores, each	1 50
Cotton gins, for not more than 6-stand gin	5 75
For each additional gin	45
Fire hydrants, each	1 50
Water for irrigation of lots, per 100 square feet lot area	01

Construction.

For each 1000 bricks laid	$0 25
Concrete sidewalks and floors, each 100 square feet construction work	25
Concrete curb, per lineal foot	25
For other purposes, per barrel of cement or lime	15
Graded streets, water used in settling streets, per 100 lineal feet	1 00

Meter Rates.

Monthly minimum charges—

⅝-inch meters	$2 90
¾-inch meters	3 25
1 -inch meters	4 50
1½-inch meters	6 00
2 -inch meters	8 50
3 -inch meters	14 00
4 -inch meters, or larger	20 00

Each of the foregoing "Monthly Minimum Charges" will entitle the consumer to the quantity of water which that minimum charge will purchase at the following "Monthly Quantity Rates":

Monthly Quantity Rates.

0 to 1,000 cubic feet, per 100 cubic feet	$0 28
Next 4,000 cubic feet, per 100 cubic feet	20
Next 5,000 cubic feet, per 100 cubic feet	15
Next 10,000 cubic feet, per 100 cubic feet	12
Over 20,000 cubic feet, per 100 cubic feet	10

It is hereby further ordered, that Imperial Utilities Corporation be and it is hereby directed to file with the Commission, within thirty days from the date of this order, revised rules and regulations covering its relations with its consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

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For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION NO. 19600.

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED MOTOR FREIGHT LINES, INCORPORATED, FOR PERMISSION TO REISSUE AND TO ISSUE SHARES OF ITS CAPITAL STOCK.

Application No. 14489.

Decided April 13, 1928.

SECURITY ISSUES—STOCK.—Consolidated Motor Freight Lines, Inc., authorized to issue $269,225 of its capital stock in exchange for stock of Consolidated Motor Freight Lines Co.

SECURITY ISSUES—REISSUANCE.—Where a utility had issued stock, caused the incorporation of a Nevada corporation, transferred its assets to the latter corporation, which later forfeited its charter, and exchanged its stock for stock of the Nevada corporation, authoriation was granted to issue, or reissue shares of its stock for stock of the Nevada corporation in the same ratio as the original conversion was made, upon retransfer of the assets of the Nevada corporation to applicant, although ordinarily applications of such a nature would be denied.

Athearn, Chandler and Farmer, by *F. G. Athearn*, for Applicant.

BY THE COMMISSION.

OPINION.

Consolidated Motor Freight Lines, Inc., has applied to the Railroad Commission for permission to issue 53,845 shares of its capital stock, of the par value of $5 a share and the aggregate par value of $269,225, for the purpose hereinafter set forth.

It appears that applicant was organized under the laws of the State of California on or about May 28, 1923, and that it has an authorized capital stock of $1,000,000 divided into 200,000 shares of the par value of $5 each, all common. Heretofore it has been authorized to issue stock as follows:

Decision number	*Date of decision*	*Number of shares*	*Par value*
9421	August 15, 1921	4,750	$23,750 00
10566	June 8, 1922	2,180	10,900 00
11419	December 29, 1922	8,100	40,500 00
14123	October 2, 1924	8,037	40,185 00
16564	April 26, 1926	27,050	135,250 00
Totals		50,117	$250,585 00

It is reported that all of the stock authorized by the Commission was issued and that in addition 2218 shares of the aggregate par value of

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$11,090, which were not authorized by the Commission, were also issued, making a total issue of 52,335 shares of the aggregate par value of $261,675.

On November 12, 1926, the then directors of applicant caused the incorporation, under the laws of the state of Nevada, of a corporation known as Consolidated Motor Freight Lines Company with an authorized capital stock of $1,000,000, divided into 50,000 shares of the par value of $20 each, and attempted to transfer to it all the assets, operative and nonoperative, of applicant, except three White trucks in exchange for 12,500 shares of stock of the par value of $250,000. Thereafter the offer was made to applicant's stockholders to exchange their stock for the stock of the Nevada corporation on the basis of four shares of applicant's stock of the par value of $5 each, for one share of the Nevada corporation's stock of the par value of $20.

Pursuant to this offer it is reported that 50,200 shares of applicant's stock, of the par value of $251,000, were so exchanged and that 2135 shares of the par value of $10,675 were not exchanged. It is alleged that in addition to the stock of the Nevada corporation given in exchange for these shares so converted, other shares of the Nevada corporation were sold and the proceeds used by applicant in the conduct of its business, a total of 13,461¼ shares of the Nevada corporation, of the total par value of $269,225 having been issued, either in exchange for $251,000 of applicant's stock or for cash from purchasers. Since then, according to the record, the Nevada corporation has forfeited its charter.

The record also shows that following these transactions a new board of directors was elected. Counsel for applicant and its present directors question the validity of the transfer of applicant's assets, the issue of the stock of the Nevada corporation and the exchange of such stock for applicant's stock. They now propose, as a step in applicant's reorganization, to cause the retransfer of the assets of the Nevada corporation to applicant and to issue, or reissue, shares of its stock for the 13,461¼ shares of stock of the Nevada corporation in the same ratio as the original conversion was made. This will call for the issue of 53,845 shares of applicant's stock of the par value of $269,225.

The plan proposed is believed by applicant's officers to be the only fair and equitable one to follow with reference to the holders of the stock of the Nevada corporation who heretofore acquired such stock by purchase or by surrender of applicant's stock. Carrying it into effect and eliminating the Nevada corporation will, it is thought, remove certain legal questions now existing concerning some of applicant's operations and transactions. In addition it is reported that the new management has had all of the books and records rewritten and set up in accordance with the classification prescribed by this Commission and that it has found it possible to effect economies and reductions in

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operating costs to such an extent that it should realize an operating profit and be in a position where it can render better transportation service.

Under the circumstances surrounding this company we will authorize it to issue, or reissue, its shares of stock as applied for in this application. Ordinarily applications of this nature would be denied by the Commission. We feel, however, that the granting of this application should and will assist applicant's officers to reorganize its affairs and place it on a better basis.

ORDER.

Consolidated Motor Freight Lines, Inc., having applied to the Railroad Commission for permission to issue 53,845 shares of stock for the purpose indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose specified in this order and that the expenditures for such purpose are not in whole or in part reasonably chargeable to operating expenses or to income and that this application should be granted as herein provided;

It is hereby ordered, that Consolidated Motor Freight Lines, Inc., be and it hereby is authorized to issue on or before October 1, 1928, 53,845 shares of its capital stock of the aggregate par value of $269,225 in exchange for the outstanding 13,461¼ shares of the stock of Consolidated Motor Freight Lines Company, of the aggregate par value of $269,225.

The authority herein granted is subject to the following conditions:

1. Applicant during 1928 shall file with the Commission quarterly statements showing the operating revenue and expenses, income and profit and loss accounts, the first statement to be filed on or before April 30th covering the first three months of the year and the remaining statements on or before thirty days following the close of each quarter.

2. Applicant shall keep such record of the issue and delivery of the stock herein authorized as will enable it to file on or before the twenty-fifth day of each month a verified report as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted will become effective upon the date hereof.

Dated at San Francisco, California, this thirteenth day of April, 1928.

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DECISION No. 19602.

IN THE MATTER OF THE APPLICATION OF NARBONNE RANCH WATER COMPANY No. 2 FOR ORDER AUTHORIZING LOAN ON PROPERTY, AND INCREASE IN RATES.

Application No. 14028.

Decided April 13, 1928.

RATES—WATER UTILITY.—Narbonne Ranch Water Company No. 2 authorized to adjust rates for service in vicinity of Lomita, Los Angeles County.

SERVICE—ACCESSORIES AND CONNECTIONS—OWNERSHIP AND CONTROL.—The installation of meters and services at the expense of consumers is not in accordance with the Commission's general rules and regulations, which require all water utilities to install and maintain, at their own expense, the service facilities from the main to the curb or property line.

SERVICE—ACCESSORIES AND CONNECTIONS—PURCHASE OF CONSUMER'S EQUIPMENT. —A water utility was required to purchase service facilities owned by consumers and thereafter to make all new installations at its own expense.

VALUATION—TANGIBLES—SERVICES PAID FOR BY CONSUMERS.—The additional cost of purchasing facilities paid for by consumers should be included in the investment of a utility reasonably devoted to the public use.

DISCRIMINATION—RATES—PARTICULAR CLASSES—STOCKHOLDERS.—Consumers of a utility receiving the same classes of service should pay the same rate, irrespective of their status as stockholders or nonstockholders.

Dodson and Shunk, by *G. C. Dodson*, for Applicant.
J. R. Jensen, for certain Protestant Consumers.

BY THE COMMISSION.

OPINION.

This is an application by Narbonne Ranch Water Company No. 2, a corporation, which is engaged in the business of selling water for domestic and irrigation purposes in and in the vicinity of Lomita, Los Angeles County, California. The application alleges in effect that it is necessary to replace approximately 2650 feet of 10-inch pipe and to construct a new reservoir in order to enable applicant to render adequate service to its consumers; that applicant has arranged to obtain a loan of $5,000 to cover the cost of the above mentioned improvements; that the present rates do not provide an adequate return on the present investment; that the return will be still more inadequate when the contemplated additions and betterments have been installed. Wherefore, applicant asks that the Railroad Commission make its order authorizing applicant to secure a bank loan to provide the funds required for the proposed additions to the plant and to make such an adjustment of its rates as will enable applicant to obtain an adequate return on its investment.

A public hearing was held in the above entitled proceeding before Examiner Williams at Lomita, Los Angeles County, after all interested parties had been duly notified and given an opportunity to appear and be heard.

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This water system was originally installed by W. I. Hollingsworth in 1907 to serve a subdivided area covering Narbonne Ranch No. 2. It was operated as a mutual water company until water service was extended to the public in the townsite of Lomita and adjacent lands. In Application No. 4099, this company, among other things, asked for authority to be permitted to operate as a mutual water company, but this request was denied without prejudice in the Commission's Decision No. 6063, dated January 15, 1919, 16 C. R. C. 408.

The record shows that 340 shares of common stock of par value of $10 per share were distributed to the purchasers of the subdivided lands in proportion to their holdings as an incident to their land purchases and without separate consideration for the water stock. In addition to furnishing domestic and irrigation water to the subdivided lands, water is also sold for domestic use in the town of Lomita.

The water supply is obtained by pumping from a well, from which it is delivered into a concrete reservoir having a capacity of approximately 38,800 gallons. The water is then distributed by gravity through 44,150 feet of mains ranging from ten to one and one-half inches in diameter. The average number of domestic consumers during 1927 was 307 and the average number of irrigation consumers over the same period was 36. The system is fully metered but the meters and services are the property of consumers.

The schedule of rates at present in effect is as follows:

Domestic Meter Rates.

For stockholders—	
First 1,000 cubic feet per month	$1 25
All over 1,000 cubic feet for each additional 1,000 cubic feet	50
For nonstockholders—	
First 1,000 cubic feet per month	1 50
All over 1,000 cubic feet for each additional 1,000 cubic feet	50

Irrigation Rate.

Weir inch per hour	02

Applicant did not present an appraisal of its property or a study of its maintenance and operating expenses, but relied on the results of operation set out in its annual reports filed with the Railroad Commission. The operating revenues and expenses, exclusive of depreciation, shown in these reports for a number of years are as follows:

	1922	*1923*	*1924*	*1925*	*1926*	*Year ending Nov. 1 1927*
Revenue	$4,301 54	$4,923 15	$7,046 89	$7,139 96	$6,283 15	$7,823 31
Expense	5,421 56	4,556 69	5,572 73	7,450 10	6,094 66	5,947 00
	*$1,120 02	$366 46	$1,474 16	*$310 14	$188 49	$1,876 31

* Deficit.

A report containing an appraisal of the physical property and an analysis of the maintenance and operating cost was presented by D. H. Harroun, one of the Commission's hydraulic engineers, in which he

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estimated the original cost of the property to be $36,396, with a corresponding depreciation annuity of $578, computed by the sinking fund method at 5 per cent. The maintenance and operating expenses for the future were estimated to be $4,751 and were based largely on the cost of operating similar systems under like conditions. This report and appraisal were accepted by applicant and protestants and will be used for the purposes of this proceeding.

Applying the operating figures recommended by the Commission's engineer, the operations for 1926 and 1927 result in a return of 2.80 per cent and 6.85 per cent respectively, on the estimated cost of the property. However, the evidence indicates that the percentage of increase in business experienced in 1927 can not reasonably be expected for the immediate future.

All meters and services on this system have been installed at the expense of the consumers. This practice is not in accordance with the Commission's general rules and regulations, which require all water utilities to install and maintain, at their own expense, the service facilities from the main to the curb, or property line. The company therefore will be required to purchase the service facilities from the consumers and hereafter make all new installations at its own expense. However, the purchase of these facilities will require the outlay of more capital and the additional cost thereof should be included in the investment of the company reasonably devoted to the public use. It is estimated that the cost of acquiring these services will approximate $6,000, the inclusion of which will correspondingly increase the estimated cost of the properties and also somewhat increase the operating expenses.

Under these circumstances, it is apparent that the rates of this utility should be slightly readjusted in order to provide a more proper return upon the investment and remove existing discrimination. In order to avoid a severe financial strain upon the utility, the following order will permit the payment to be made for the services and meters through credits on the monthly water bills.

The rates now in effect provide a charge of $1.25 per month to stockholders of the company for the same quantity of water for which a nonstockholder pays $1.50. This method of charging for service is clearly an unfair discrimination in rates and the practice must be discontinued immediately. The following order will provide that all consumers receiving the same class of service pay the same rate, irrespective of their status as stockholders or nonstockholders.

The company, in its application, requested authority to negotiate a loan for $5,000, which money was to be used for additions and betterments to its system. The testimony showed that arrangements have

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already been completed for a one-year loan, and applicant asked that this request be dismissed.

A petition was presented by a number of consumers in protest of the company's application, in which it was alleged that the needed improvements on the system should be financed by an assessment against the property of all the stockholders and not through the medium of increased rates, in order that the nonresident stockholders be made to contribute their share of the improvements to the system in proportion to their holdings. The adjustment in the rates granted herein is solely for the purposes of removing unjust discrimination and establishing a more equitable schedule of rates for the services rendered; no part of said schedule is designed for the purpose of financing new construction.

ORDER.

Narbonne Ranch Water Company No. 2, a corporation, having applied to the Railroad Commission for authority to increase the rates charged for water service furnished to consumers in and in the vicinity of Lomita, Los Angeles County, and having also made application for authority to secure a bank loan to provide funds necessary for capital investment, a public hearing having been held thereon, the matters having been submitted and the Commission being now fully advised in the premises:

It is hereby found as a fact that the rates and charges of the Narbonne Ranch Water Company No. 2 for water delivered to consumers in and in the vicinity of Lomita, Los Angeles County, in so far as they differ from the rates herein established, are unjust and unreasonable and discriminatory and that the rates and charges herein established are just and reasonable rates to be charged for the service rendered.

And basing the order upon the foregoing findings of fact and upon the statements of fact contained in the opinion which precedes this order;

It is hereby ordered, by the Railroad Commission of the State of California that Narbonne Ranch Water Company No. 2 be and it is hereby authorized and directed to file with this Commission, within twenty days from the date of this order, the following schedule of rates to be charged for all water service rendered subsequent to the thirtieth day of April, 1928, said schedule of rates to be applicable to all of applicant's consumers, irrespective of said consumers' status as stockholders or nonstockholders of this company.

Meter Rates.

Monthly meter quantity rates—	
First 1000 cubic feet	$1 50
All over 1000 cubic feet, per 100 cubic feet	05
Monthly minimum meter charges—	
⅝- or ¾-inch meter	$1 50
1-inch meter	2 50
1½-inch meter	3 50
2-inch meter	6 00

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Each of the foregoing monthly minimum charges will entitle the consumer to the quantity of water which that minimum will purchase at the "monthly minimum meter charges" set out above.

Irrigation rate—

Weir inch hour.....$0 02

It is hereby further ordered, that the application, in so far as it relates to the loan for the financing of the proposed improvements, be and the same is hereby dismissed without prejudice.

It is hereby further ordered, that Narbonne Ranch Water Company No. 2 be and it is hereby directed to file with the Railroad Commission, within thirty days from the date of this order, revised rules and regulations to govern the distribution of water to consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

It is hereby further ordered, that Narbonne Ranch Water Company No. 2 be and it is hereby directed to acquire title to all service connections now owned by its consumers, including the service pipe from main to curb or property line, meter and meter-box, if any; payment for said facilities to be based upon a fair estimate of present value thereof and made by means of refunds on the monthly water bills of said consumers to the extent of not less than twenty per cent thereof, by cash, or otherwise; provided, however, that all said service connections be so acquired and paid for on or before the first day of October, 1929. Said company shall file a quarter-annual statement with this Commission showing the status of compliance with the directions set out in this paragraph of the order herein.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this thirteenth day of April, 1928.

Decision No. 19606.

IN THE MATTER OF THE APPLICATION OF THE CITY OF BERKELEY, A MUNICIPAL CORPORATION, FOR AN ORDER AUTHORIZING A STREET CROSSING AT GRADE OVER THE TRACKS AND RIGHT OF WAY OF THE KEY SYSTEM TRANSIT COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY AT THE INTERSECTION OF SANTA FE AVENUE WITH THE MAIN LINE OF SAID ATCHISON, TOPEKA AND SANTA FE RAILWAY AND THE ALBANY BRANCH LINE OF SAID KEY SYSTEM TRANSIT COMPANY.

Application No. 14190.

Decided April 13, 1928.

CROSSINGS.—Application of the city of Berkeley to construct Santa Fe avenue across tracks of The Atchison, Topeka and Santa Fe Railway Company and Key System Transit Company, denied.

CROSSINGS—GRADE CROSSINGS—IN GENERAL.—The opening of an additional grade crossing not being justified by public convenience and necessity, and the most

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feasible solution being the opening of a connecting street diverting traffic to an existing crossing, application to construct such new crossing was denied.

Earl J. Sinclair, City Attorney, City of Berkeley, for Applicant.
L. K. Fraser, City Attorney, for the City of Albany.
Platt Kent, for The Atchison, Topeka and Santa Fe Railway Company, Protestant.
Brobeck, Phleger and Harrison, by *Frank S. Richards*, for Key System Transit Company, Protestant.
W. H. Moore, in propria persona, Protestant.

BY THE COMMISSION.

OPINION.

City of Berkeley, a municipal corporation, has petitioned the Railroad Commission for an order authorizing the establishment of a crossing at grade at Santa Fe avenue in the city of Berkeley over and across the tracks and right of way of The Atchison, Topeka and Santa Fe Railway and over and across the tracks and right of way of the Albany branch line of the Key System Transit Company.

A public hearing on this application was conducted by Examiner Handford at Berkeley, the matter was duly submitted and is now ready for decision.

The proposed crossing involves the track of the Oakland branch of the Santa Fe and the track of the Westbrae line of the Key System Transit Company, which are parallel and adjacent and run in a northerly and southerly direction in this vicinity. The Santa Fe line consists of a single track, over which about twelve passenger trains and a maximum of six freight trains operate per twenty-four-hour period. The single track line of the Key System Transit Company has its northerly terminus at Santa Fe avenue. Over this line single car trains are operated every twenty minutes during the daytime and every forty minutes after 8 p.m., except during the time from 1 a.m. to 6 a.m., when no cars are operated.

Santa Fe avenue is laid out in a northeasterly and southwesterly direction and if extended over the said railroads, would cross the tracks at an angle of approximately thirty-eight degrees. Although the crossings herein applied for are in the corporate limits of the city of Berkeley, the boundary between the municipalities of Berkeley and Albany is located about 100 feet north of the crossings. That portion of Santa Fe avenue lying within Albany is about 80 feet in width and is improved with an oil macadam surface. Marin avenue, an important east and west street, intersects Santa Fe avenue at a point about three blocks north of the proposed crossings. From this point Santa Fe avenue then continues northerly to the county line between Alameda and Contra Costa counties, a distance of about one mile.

That portion of Santa Fe avenue lying within the city of Berkeley and south of the proposed crossings is approximately 50 feet wide, is improved with oil macadam, and extends southerly to Cornell avenue and Page street, a distance of about one-quarter of a mile.

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The next crossing to the north of the one proposed herein, and approximately 850 feet distant therefrom, is at Dartsmouth street, an east and west street in the city of Albany.

Curtis street and Neilson street, which are 300 feet apart, run parallel to and east of Santa Fe avenue. These two streets intersect the tracks involved herein at points about 400 feet and 800 feet, respectively, south of the proposed crossing.

Gilman street, an east and west street in Berkeley, crosses Santa Fe avenue, Curtis street and Neilson street at right angles and the tracks of the two carriers a few feet south of the Curtis street crossing.

Northside avenue crosses the Santa Fe and Key System tracks some 200 feet south of Neilson street. This is not a through street, but terminates a short distance north of the Key System tracks.

It appears from the record that the traffic, as a whole, can be better served by the construction of a street east of and parallel to the Key System tracks from Santa Fe avenue to at least Curtis street, although, preferably, it should be extended to Gilman street. By so doing, traffic originating on Santa Fe avenue and destined to the east via Gilman street, will not need to cross any tracks and traffic from Santa Fe avenue destined to San Pablo avenue can easily divert to Curtis street and continue along Curtis street. It further appears from the evidence that certain negotiations are under way for the consideration of the opening of such a connecting street. Not only would the opening of such a street between Santa Fe avenue and Gilman street divert traffic away from the railroad tracks, but it would also confine the traffic that would continue to cross the tracks to a lesser number of locations and under such conditions better facilities for the protection of vehicular traffic can be more readily furnished.

Since the time when former proceedings (Application No. 12149 and Application No. 14444) looking toward the opening of these crossings were dismissed, Francis street has been cut through between Curtis street and Santa Fe avenue, about one long block north of the proposed crossing, thereby giving an access to Curtis street from those living along Santa Fe avenue to the north, but those living on Santa Fe avenue, between Francis street and the proposed crossing, must go north on Santa Fe avenue to Francis street, thence by way of Francis street and Curtis street to get across the railroad.

From the record herein we are of the opinion and hereby conclude that public convenience and necessity do not justify the opening of an additional grade crossing in this vicinity and that the most feasible method of treating this situation would be for the municipal authorities to open a street connecting Santa Fe avenue, Curtis street and Gilman street east of and parallel to the Key System right of way.

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ORDER.

The city of Berkeley having made application for permission to construct Santa Fe avenue at grade across the track of The Atchison, Topeka and Santa Fe Railway Company and the track of Key System Transit Company, a public hearing having been held, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusion as set forth in the preceding opinion:

It is hereby ordered, that this application be and it hereby is denied without prejudice.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19608.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES COUNTY WATER WORKS FOR AUTHORITY TO SELL ITS PROPERTIES AND TO DISCONTINUE PUBLIC UTILITY SERVICE AND OF GARDENA VALLEY WATER COMPANY TO PURCHASE THE SAID PROPERTIES AND TO ASSUME THE SAID PUBLIC UTILITY SERVICE AND TO ISSUE BONDS, PREFERRED STOCK AND COMMON STOCK IN PAYMENT FOR SAID PROPERTIES.

Application No. 14501.

Decided April 13, 1928.

TRANSFER—SECURITY ISSUES.—Los Angeles County Water Works authorized to transfer its properties to Gardena Valley Water Co., and the latter authorized to issue $125,000 of 6 per cent twenty-year first mortgage bonds, $30,000 of 7 per cent cumulative preferred stock, and $64,500 of common stock.

McAdoo, Neblitt and O'Connor, for Applicants.

BY THE COMMISSION.

OPINION.

Los Angeles County Water Works in this proceeding asks permission to sell its properties to the Gardena Valley Water Company and thereafter discontinue public utility service. The Gardena Valley Water Company in turn asks permission to purchase the properties of the Los Angeles County Water Works, to issue and sell at 91.8357 per cent of their face value and accrued interest, $125,000 of 6 per cent twenty-year bonds, issue and sell for cash at par $30,000 of 7 per cent preferred stock, and deliver $64,500 of common stock to the Los Angeles County Water Works as part payment for its properties and to assume the public utility obligations of Los Angeles County Water Works.

The Los Angeles County Water Works owns and operates a public utility water system serving the unincorporated towns of Gardena and Moneta and adjacent territory in Los Angeles County and also a portion of the city of Los Angeles in the so-called "shoestring strip." The service area is bounded on the north by Ballona avenue, on the south by Electric street (182d street), on the west by Arlington street

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and on the east by Figueroa street. At the end of 1927 there were, according to the company's annual report, 1860 services attached to its water system. For the reason that not all of the services are metered, it has been impossible for the company to furnish a record of its water sales. Both the increase in services and the operating revenues indicate an increase in the company's business. The number of services in 1922 are reported at 1242 and the operating revenues at $22,819; while for 1927 the number of services, as said, are reported at 1860 and the operating revenues at $48,651.85.

The estimated original cost of the properties of the Los Angeles County Water Works as of December 31, 1927, is reported at $265,805. This amount is based upon an estimate of the original cost of the water system by the Commission's engineers as of December 31, 1925 (Decision No. 17208, Vol. 28, Opinions and Orders of the California Railroad Commission, page 451), amounting to $227,443. To this figure was added the actual cost of net additions to capital from January 31, 1926, to December 31, 1927, shown on the books of the Los Angeles County Water Works and amounting to $38,362. Deducting from the $265,805 the amount which should be in the reserve for accrued depreciation, namely, $47,022, and the advances by consumers for construction purposes amounting to $6,514.23, and then adding to the difference the estimated cost of proposed additions and improvements ($25,973.49) to be financed from the sale of the bonds and preferred stock, referred to in this application, results in a net figure of $238,242.26.

For 1927, as stated, the company reports operating revenues of $48,651.85 and for 1926, $37,675.44. The operating expenses for 1927 are reported at $31,891 and for 1926, $31,274.38, leaving net operating revenue for 1927 of $16,760.85, and for 1926, $6,401.06. The operating expenses for the two years are segregated as follows:

Item	*1927*	*1926*
Source of water supply expenses		$2,955 93
Pumping expenses	$7,597 24	6,959 90
Transmission and distribution expenses	13,612 93	9,070 87
Commercial expenses	2,428 88	2,822 72
General and miscellaneous expenses	2,949 02	3,759 94
Taxes	1,320 73	928 47
General amortization of capital	3,982 20	4,776 55
Totals	$31,891 00	$31,274 38

Gardena Valley Water Company asks permission to issue and sell at not less than 91.8357 per cent of their face value and accrued interest $125,000 of 6 per cent twenty-year bonds and use the proceeds, amounting to $114,794.62, for the following purposes:

a. $40,000 to pay the present outstanding bonded debt of Los Angeles County Water Works, amounting to $40,000.

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b. $48,821.13 to pay notes aggregating the same amount and issued by Los Angeles County Water Works to obtain funds to pay for the cost of materials purchased for improvements and additions to its water system.

c. $25,973.49 to be expended by the trustee under the company's proposed mortgage to reimburse the treasury for improvements and additions to the water system made, and to be made, subsequent to December 31, 1927.

The Gardena Valley Water Company asks permission to issue and sell at par $30,000 of its 7 per cent preferred stock and use the proceeds for the following purposes:

a. $27,500 to be used in payment of a portion of the obligation incurred by Los Angeles County Water Works for additions and improvements to its water system, which obligations on December 31, 1927, amounted to $28,502.39.

b. To pay organization expenses not exceeding $2,500.

The $64,500 of common stock which the Gardena Valley Water Company asks permission to issue will be delivered to the Los Angeles County Water Works in payment for its properties.

By Decision No. 19005, dated November 4, 1927, in Application No. 13914, the Commission denied the request of the Gardena Valley Water Company to issue $125,000 of 6½ per cent twenty-year bonds, $30,000 of 7 per cent cumulative preferred stock and $85,000 of common stock. Since then the company's earnings have continued to increase and, as indicated herein, the requests for permission to issue securities have been modified. The company now asks authority to issue 6 per cent bonds instead of 6½ per cent, and $64,500 of common stock instead of $85,000 of common stock. If the stock and bonds which the Gardena Valley Water Company now asks permission to issue had been outstanding during 1927 the company would have earned the equivalent of about 9 per cent on the $64,500 of common stock.

The Gardena Valley Water Company asks permission to execute a mortgage and or deed of trust to secure the payment of a presently authorized bond issue of $500,000. It refers to the proposed mortgage and or deed of trust which it filed in Application No. 13914. The instrument filed in that proceeding does not conform with the bonds which the company now asks permission to issue. That instrument is also incomplete in that it does not show the date on which it proposes to execute the same; the date on which the bonds of the company may be redeemed; refers to the expenditure of bond proceeds for purposes other than those indicated in the application now before the Commission and does not show the date on which the company will be required

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to make sinking fund payments. In view of this situation, we believe that before the authority herein granted to issue bonds becomes effective, the Gardena Valley Water Company should file with the Commission a revised copy of its proposed mortgage and be authorized to execute such instrument.

ORDER.

Los Angeles County Water Works having applied to the Railroad Commission for permission to sell its properties to the Gardena Valley Water Company and to discontinue public utility service, and Gardena Valley Water Company having asked permission to purchase such properties and to assume public utility service; to execute a mortgage and/or deed of trust and to issue $125,000 of 6 per cent twenty-year bonds, $30,000 of 7 per cent cumulative preferred stock and $64,500 of common stock, and the Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the issue of the bonds and stock herein authorized is reasonably required by Gardena Valley Water Company and that the expenditures are not in whole or in part reasonably chargeable to operating expenses or to income and that this application should be granted as herein provided; therefore,

It is hereby ordered, as follows:

1. Los Angeles County Water Works may, after the effective date of the authority herein granted and on or before October 1, 1928, sell all of its properties to the Gardena Valley Water Company, which company is hereby authorized to acquire the same, said properties being more particularly described in Exhibit No. 1 filed in Application No. 13914. Upon the purchase of said properties by the Gardena Valley Water Company and the assumption of the public utility service by said company, the Los Angeles County Water Works may discontinue its public utility service.

2. The Gardena Valley Water Company may, after the effective date of the authority herein granted, and on or before October 1, 1928, issue $125,000 of 6 per cent twenty-year first mortgage bonds, $30,000 of 7 per cent cumulative preferred stock, and $64,500 of common stock. The bonds shall be sold for not less than 91.8357 per cent of their face value and accrued interest and the proceeds, other than accrued interest, amounting to not less than $114,794.62, shall be used for the following purposes:

a. $40,000 to pay the present outstanding bonded debt of Los Angeles County Water Works, amounting to $40,000.

b. $48,821.13 to pay notes aggregating the same amount and issued by Los Angeles County Water Works to obtain funds to pay for the

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cost of materials purchased for improvements and additions to its water system.

c. $25,973.49 to be expended by the trustee under the company's proposed mortgage to reimburse the treasury for improvements and additions to the water system made, and to be made, subsequent to December 31, 1927.

The preferred stock shall be sold for not less than par and $27,500 of the proceeds used to pay indebtedness incurred by Los Angeles County Water Works for additions and improvements to its water system and $2,500 to pay organization expenses. The $64,500 of common stock shall be delivered by the Gardena Valley Water Company at par to the Los Angeles County Water Works in payment for its properties. The accrued interest may be used for general corporate purposes.

3. The authority herein granted will become effective when Gardena Valley Water Company has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $125, and when the Commission has authorized said company to execute a mortgage and or deed of trust to secure the payment of the bonds herein authorized to be issued.

4. Applicant shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

5. Within sixty days after the transfer of the properties herein authorized, Gardena Valley Water Company shall file a certified copy of the deed under which it acquires title to said properties, also a statement showing the date when it acquired the same.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19610.

CALIFORNIA HAWAIIAN MILLING CO., INC., A CORPORATION,

vs.

SOUTHERN PACIFIC COMPANY, A CORPORATION; WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A CORPORATION.

Case No. 2473.

Decided April 13, 1928.

DISCRIMINATION—MILLING IN TRANSIT.—Complaint alleging discrimination in failure to grant milling in transit privileges on alfalfa hay at San Francisco dismissed.

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RATES—RAILROAD—MILLING IN TRANSIT. That there is tonnage substitution at transit and storage points, terminal railroad providing for such practice, does not constitute discrimination (26 I. C. C. 204, 210).

RATES—RAILROAD—MILLING IN TRANSIT.—Milling in transit is a special arrangement which may be originated by carriers the same as they may voluntarily publish subnormal rates to meet water competition, and the Commission will not ordinarily establish or extend milling in transit unless it is shown that the voluntary action of the carriers results in unlawful discrimination.

C. R. Schulz, for Complainant.
G. E. Walk, for Western Pacific Railroad Company, Defendant.
James E. Lyons, for Southern Pacific Company, Defendant.
Platt Kent, E. C. Pierre and *B. Levy*, for The Atchison, Topeka and Santa Fe Railway Company, Defendant.
C. C. Connolly, for Albers Bros. Milling Company.

BY THE COMMISSION.

OPINION.

The complainant, a corporation organized under the laws of the State of California, with its principal place of business at San Francisco, is engaged in the buying and selling of grains and alfalfa hay and the manufacturing of alfalfa meal and grain products. It alleges by complaint filed January 5, 1928, that the failure and refusal of these defendants to grant milling in transit privileges on alfalfa hay at San Francisco subjects it to undue prejudice and disadvantage and extends undue preference and advantage to its competitors. We are asked to require defendants to permit the milling in transit of alfalfa hay between the points of origin and destination of alfalfa meal.

A public hearing was held March 15, 1928, before Examiner Geary at San Francisco, and the case having been duly submitted is now ready for our opinion and order.

Complainant avers that the practices of defendants as published in their respective terminal tariffs and circulars providing that alfalfa meal may be stored in transit and subsequently reshipped from the transit station at the balance of the through rate applicable results in preference and advantage to its competitors because complainant can not mill alfalfa hay in transit but must pay the rate on the hay to San Francisco and the rate on alfalfa meal to destination. Complainant buys alfalfa hay at producing points in California, shipping the same by the lines of defendants to San Francisco, where it is manufactured into alfalfa meal and sold at Petaluma, Stockton, San Jose, Los Angeles and other points, which transactions are in competition with the millers of alfalfa meal located at Gerber and Dixon, California, and at Fallon and Lovelock, Nevada.

Complainant and its competitors operate in the same general territory, and both are compelled to pay the local rates on hay to the mills and the rate therefrom on the manufactured alfalfa meal. As illustrative of this situation, the rates on hay from Knights Landing to Dixon and San Francisco are 7½ cents and 10 cents per 100 pounds respectively; the rates on alfalfa meal to Petaluma are 12 cents per

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100 pounds from Dixon and 7½ cents per 100 pounds from San Francisco. These factors result in total combination rates of 19½ cents per 100 pounds on hay transmitted at Dixon as compared with 18 cents per 100 pounds on hay transmitted at San Francisco. In this particular situation the competitors of this complainant are at a disadvantage. However, where the alfalfa hay is produced immediately adjacent to the manufacturing plant, the advantage would be in favor of the competitors.

Complainant gave testimony alleging there was substitution of tonnage at the storage points by the millers of alfalfa meal and that this practice created the discrimination complained of. That there is tonnage substitution at transit and storage points is not questioned, it being admitted that it is impractical to preserve the identity of the different colors, grades or blends of commodities, and the terminal tariffs provide for this practice, therefore this complainant has the same privilege as its competitors.

In the matter of investigation into the substitution of tonnage at transit points, Docket No. 3002, 26 I. C. C. 204–210, the Interstate Commerce Commission said:

> The Commission has been assured, both on behalf of the carriers and the shippers, that the carriers can lawfully publish tariffs specifically permitting substitution in so many words, and that in the absence of a showing that they are unreasonable, or unjustly discriminatory, or unduly preferential, they are entirely proper.

Milling in transit is a special arrangement which may be originated by the carriers the same as they may voluntarily undertake to publish subnormal rates to meet water competition, and this Commission will not ordinarily establish or extend milling in transit unless it is shown that the voluntary action of the carriers results in unlawful discrimination. Defendants do not now provide for the milling in transit of alfalfa hay within California, and no compelling necessity or general demand for its establishment has been shown in this record. The storing in transit of alfalfa meal is open to all shippers without discrimination and therefore this complainant is not discriminated against.

After a careful consideration of the testimony and exhibits we are of the opinion and find that defendants' failure to provide for the milling in transit of alfalfa hay while providing for the storing in transit of alfalfa meal, is not unjustly discriminatory or unduly preferential. The complaint will be dismissed.

ORDER.

This case being at issue upon complaint and answers on file, having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and basing this order on

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the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19611.

THE CALIFORNIA TRANSPORTATION COMPANY, A CORPORATION,

vs.

AYRES-WHITESIDE TRANSPORTATION COMPANY.

Case No. 2493.

Decided April 13, 1928.

VESSELS—INTERMEDIATE POINTS.—Ayres-Whiteside Transportation Company directed to cease and desist from transporting property to or from Avon.

VESSELS—INTERMEDIATE POINTS.—Certificates authorizing operation of vessels between specified points and points directly intermediate should be given a reasonably liberal interpretation, but can not be construed to authorize operation to a point requiring a distinct and material departure from a usually traversed channel (*Sperry Flour Co.* vs. *Island Transportation Co.*, 30 C. R. C. 561, 563).

Sanborn, Roehl and DeLancey C. Smith, for Complainant.
Rufus H. Kimball, for Defendant.

CARR, *Commissioner.*

OPINION.

The complaint and answer here place in issue the right of defendant to serve Martinez and Avon under the certificate granted it by Decision No. 16337, in re application of *Ayres-Whiteside Transportation Company,* 27 C. R. C. 834.

A public hearing was held on April 3, 1928, and the case is now under submission and ready for decision.

The certificate under which the defendant claims the right to serve Martinez and Avon authorizes operations between San Francisco, Oakland, Alameda, West Berkeley, San Rafael and Sausalito on the one hand "and Suisun, Benicia and Crockett and intermediate points on the other hand, as more specifically set forth in the application and as amended."

The application referred to named the following specific points to be served: San Francisco, Oakland, Alameda, Berkeley, San Rafael and Sausalito, Rodeo, Crockett, Port Costa, Benicia and Suisun, qualified, however, by the general intermediate application of rates set forth in Rule 2 of Exhibit "B" reading: "rates named in this tariff will apply from or to directly intermediate points, unless specifically provided in connection with individual items or rates." Thus defendant in its

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application requested, and the Commission in its order granted, authority to operate between San Francisco Bay points and Suisun, Benicia, Crockett and all points directly intermediate thereto. The right of defendant to serve Avon and Martinez must necessarily then depend upon the sole question of whether or not these two points are directly intermediate to the points specifically named in the order.

Certificates of this character should be given a reasonably liberal interpretation. So construed, this certificate based on the operating routes followed by the vessels would authorize the service of Martinez as a directly intermediate point between San Francisco Bay points on the one hand and Suisun on the other. It can not, however, be stretched to include the service of Avon as a directly intermediate point, since to serve Avon requires a distinct and material departure from the usually traversed channel through Carquinez Straits. (See *Sperry Flour Co.* vs. *Island Transportation Co.*, Decision No. 18994 of date November 3, 1927.)

I recommend the following form of order:

ORDER.

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing its order on the findings of fact and the conclusions contained in the opinion which precedes this order:

It is hereby ordered, that defendant Ayres-Whiteside Transportation Company be and it is hereby directed to cease and desist from transporting property to or from Avon.

It is hereby further ordered, that defendant Ayres-Whiteside Transportation Company be and it is hereby directed to cancel all rates, rules and regulations contained in tariffs on file with this Commission for the transportation of property to or from Avon.

The effective date of this order will be twenty days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19612.

UNION PAVING COMPANY

vs.

SUNSET RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 2449.

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Decided April 13, 1928.

RATES—RAILROAD.—Complaint of Union Paving Company alleging excessive charges dismissed.

RATES—RAILROAD—TWO-LINE HAUL.—The rate for a two-line haul may properly be higher than the rate for a single-line haul (*Piedra Rock Co.* vs. *S. P. Co.*, 21 C. R. C. 895), and a complaint alleging rates to be unreasonable to the extent that they exceeded rates contemporaneously maintained for a single-line haul on the assumption that a railroad, being owned jointly by two other carriers, should be treated as a part of the latter two lines for rate making purposes, was dismissed, the record indicating the carrier to be a separate corporate entity, operated as an independent line, and handling traffic at interchange points in the same manner as other carriers independently operated. (*Albers Bros. Milling Co.* vs. *S. P. Co.*, 30 C. R. C. 17.)

John Curry, for Complainant.
F. W. Mielke, Berne Levy and *J. L. Fielding*, for Defendants.

BY THE COMMISSION.

OPINION.

Complainant is a corporation with its principal place of business at San Francisco. By complaint filed November 30, 1927, it alleges that the rates on crushed rock, sand and gravel, carloads, from Friant, Seguro, Oil City and Woodrock to Conner, California, were, are and for the future will be unjust, unreasonable and discriminatory to the extent they exceed 6 cents per 100 pounds from Friant, 2½ cents per 100 pounds from Seguro and Oil City, and 5½ cents per 100 pounds from Woodrock.

We are asked to prescribe rates for the future and award reparation on all shipments that moved within the statutory period. Rates are stated in cents per 100 pounds.

A public hearing was held on April 3, 1928, before Examiner Geary at San Francisco, and the case having been duly submitted is now ready for our opinion and order.

Friant, Seguro and Oil City are located on the Southern Pacific line, Woodrock on The Atchison, Topeka and Santa Fe Railway, and Connor on the Sunset Railway. The shipments moved via the originating lines to Bakersfield, thence Sunset Railway to destination. The rates assessed and collected were 6½ cents from Friant to Conner, 151 miles; 3 cents from Seguro and Oil City to Conner, 26 and 29 miles respectively; and 6 cents from Woodrock to Conner, 139 miles. These rates are the regular two-line mileage scale as published in Pacific Freight Tariff Bureau Tariff 166–C, C. R. C. 401, applicable in Central and Northern California in the territory north of Caliente and Santa Margarita.

Complainant contends that the rates assessed were unreasonable to the extent they exceeded the rates contemporaneously maintained by defendants for a single-line haul in this territory on the assumption that the Sunset Railway, being owned jointly by the Southern Pacific

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and Atchison, Topeka and Santa Fe, should be treated as a part of the latter two lines for rate making purposes. The record indicates the Sunset Railway is a separate corporate entity, is operated as an entirely independent line, and that the traffic is handled at the interchange points with the connecting carriers in the same manner as other rail carriers independently operated.

In Case No. 2312, Decision No. 18484, June 9, 1927, *Albers Bros. Milling Company* vs. *Southern Pacific and Sunset Railway,* the same question here involved was raised with respect to the rates on milo maize from Levee Spur on the Sunset Railway to Palo Alto on the Southern Pacific. In that proceeding we said:

> It is complainant's position that the Sunset Railway, being partly owned by the Southern Pacific, should be treated as a unit of that line for rate making purposes and no consideration given to the two-line services. We do not find sufficient proof in the record to maintain this contention.

There is nothing in this record to change the conclusion that the Sunset Railway as at present operated is an independent corporation.

The principles recognized in permitting an arbitrary for a two-line haul over a one-line haul movement were discussed in Case No. 1645, *Piedra Rock Company* vs. *Southern Pacific and Atchison, Topeka and Santa Fe,* 21 C. R. C. 895, and it is therefore unnecessary to repeat the details. It is sufficient to say that this Commission and the Interstate Commerce Commission have generally held that the rate for a two-line haul may properly be higher than the rate for a single-line haul.

No evidence was offered by complainant assailing *per se* the volume of either the single-line or the two-line rates. Defendants by the testimony of their witnesses indicated that the rock rates in central and northern California were generally depressed, either directly or indirectly, by water competition in this territory. (Case No. 2087, *Union Rock Company* vs. *Atchison, Topeka and Santa Fe Railway et al.,* 27 C. R. C. 285.) The exhibits and the testimony show that the existing joint rates are not unjust, unreasonable or discriminatory. We conclude and find from this record that the case should be dismissed.

ORDER.

This case being at issue upon complaint and answers on file, full investigation of the matters involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that Case No. 2449 be and the same is hereby dismissed.

Dated at San Francisco, California, this thirteenth day of April, 1928.

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DECISION NO. 19613.

CHARLES A. HARE, NICK GOMBOS AND WILLIAM H. NEILL,

vs.

THOMAS GILBOY (APEX TRANSFER).

Case No. 2443.

Decided April 13, 1928.

AUTOMOTIVE TRANSPORTATION.—Complaint alleging common carrier operations dismissed for lack of jurisdiction.

AUTOMOTIVE TRANSPORTATION—WHAT CONSTITUTES—CONTRACT CARRIERS.—An individual transporting by truck films, lobby displays, etc., from film exchanges to theaters, under verbal contracts, with rates based on personal ancillary services as well as on the weight of package and distance to be transported, the transportation being incidental to the personal service, such as selection of films, etc., is operating as a private carrier. (*Film Transport Co.* vs. *Michigan Public Utilities Commission*, 17 Fed. (2d), 857.)

Richard T. Eddy, for Complainants.
Gwyn H. Baker, for Defendants.
Earl A. Bagby and *L. G. Markel*, for California Transit Co., Interveners.

BY THE COMMISSION.

OPINION.

This is a complaint against Thomas Gilboy, formerly operating under the fictitious name of Apex Transfer and now operating as the Gilboy Company, alleging that said defendant is engaged as a common carrier in the operation of an automobile truck line for the handling of motion picture films, etc., without first having obtained a certificate of public convenience and necessity from the Railroad Commission.

Defendant duly filed his answer in which he denies that his operations are those of a common carrier and avers that he is engaged in transportation as a private carrier and is, therefore, not subject to the jurisdiction of the Railroad Commission.

Upon the issues thus joined, a public hearing was held before Examiner Gannon at which time the matter was submitted and is now ready for decision.

Defendant's operations, as developed by his own testimony, consist in transporting films, advertising matter, lobby displays, etc., from the film exchanges in San Francisco to some 75 or 80 theaters located chiefly in the Sacramento and San Joaquin valleys, and in picking up and returning to the exchanges such films as have been displayed by the theaters. In addition, he renders to his customers what may properly be designated an "ancillary" service consisting in the main of checking the films to see that they are the ones ordered, personally making substitutions when necessary, and generally acting as the agent of the theaters served by him.

The defendant testified that he undertook the business of rendering this ancillary service about 13 years ago and has been carrying on the

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business continuously ever since. Originally, all shipments had been made by express, but about 18 months ago his clients urged him to install a motor truck service, which he did. He has verbal contracts with all the theaters served and declines to enter into any contract unless provision is made both for the hauling and ancillary service. No service of any character is rendered except to theaters and the rate is based on the personal service as well as on the weight of package and distance to be transported.

As illustrative of the personal and confidential relationship existing between defendant on the one hand and supply houses and theaters on the other, Gilboy testified that he carried keys to all the theaters and film supply houses served by him and had access to such places at any hour of the day or night. Notice of substitutions may come to him late at night and being familiar with the booking system of the exchanges he is thus enabled to make selections of films which will be satisfactory to the theaters.

Defendant testified that he operates four or five trucks over the public highways on his various routes, renders a daily service, and the actual delivery of films to the theaters is ordinarily made after 11 p.m. and from then on until the early morning hours.

The evidence herein conclusively shows that defendant is not operating as a common carrier. He does not hold himself out to serve the public generally. Being a private individual, he is invested with the right to make his own contracts and in so doing he necessarily selects certain customers and rejects others. In addition to the general attributes of a private carrier, as disclosed by defendant's operations, there is another characteristic of his services which clearly takes him out of the category of common carriers and that is the so-called ancillary service rendered by him to the theaters. It is apparent from the testimony that the services performed by defendant, both in the transportation of films and the ancillary service attendant thereupon, are so closely interrelated that they can not be separated. Indeed, having over a long period of time confined himself exclusively to the personal service, it may be said that such service constitutes the primary consideration of the contract and that the transportation service is only incidental thereto. The transporting of these goods between San Francisco and the various points of delivery does not of itself require any unusual training or experience of a technical character. On the other hand the matter of the selection of films for a diversified clientele does presuppose a technique in this regard which is acquired only through experience and which must necessarily be performed by the same person who furnishes the transportation. It is a personal and individual service which the ordinary transportation agency would decline to undertake.

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Counsel for defendant cites the recent case of *Film Transport Company* vs. *Michigan Public Utilities Commission*, 17 Fed. Rep. (2d series) 857, in support of his contention that defendant's operations are those of a private carrier. In that case the plaintiff company had entered into a written contract with 150 theater owners for the transportation of films and performed no other hauling service whatsoever. The court held that the transportation company was a private carrier and hence not subject to regulation by the Public Utilities Commission. It does not appear from the language of the decision that the Michigan company rendered what we have here referred to as an ancillary service, though it may be entirely possible that such service was performed, in which event the Michigan case would undoubtedly be on all fours with the instant case.

After a careful consideration of the evidence in this proceeding, we conclude there is nothing in the record to sustain the allegation that defendant Gilboy is operating as a common carrier. His operations are strictly those of a private carrier over which this Commission's regulation does not extend. The complaint will therefore be dismissed for lack of jurisdiction.

ORDER.

A public hearing having been held in the above entitled complaint, the matter having been duly submitted and the Commission being fully advised and basing its order on the findings of fact appearing in the foregoing opinion;

It is hereby ordered, that the complaint in this proceeding be and the same is hereby dismissed for lack of jurisdiction.

Dated at San Francisco, California, this thirteenth day of April, 1928.

DECISION No. 19616.

IN THE MATTER OF THE APPLICATION OF SONOMA WATER AND IRRIGATION COMPANY, FOR AUTHORITY TO AMEND RATES ON THE BOYES SPRINGS, AGUA CALIENTE AND SONOMA VISTA SYSTEMS.

Application No. 14226.

Decided April 17, 1928.

RATES—WATER UTILITY.—Sonoma Water and Irrigation Company authorized to increase rates on its Boyes Springs and Agua Caliente systems. Increase for Sonoma Vista system denied.

F. J. Kilmartin, for Applicant.
Frank Sprague and *A. R. Grenstead*, for certain consumers, Protestants.

BY THE COMMISSION.

OPINION.

In the above entitled application, Sonoma Water and Irrigation Company, a corporation, asks the Commission to establish increased

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and uniform rates for water delivered to its consumers at Boyes Springs, Agua Caliente and Sonoma Vista, in Sonoma County. Public hearings in this proceeding were held at Fetters Springs and Boyes Springs before Examiner Rowell after all interested parties had been notified and been given an opportunity to appear and be heard.

Besides the three systems above mentioned, the applicant also owns the water system supplying the city of Sonoma. Reference should be made to several previous proceedings before the Commission involving each of these water systems, and at the hearing it was stipulated that the evidence and decisions in Applications Nos. 12946, 13452, 13453 and 13454 be made a part of the record in this proceeding, in so far as germane.

In Decision No. 17579, on Application No. 12946, and in Decision No. 18419, rendered on rehearing of said application, issued June 1, 1927, this Commission fixed the value of the Sonoma City, El Verano and Sonoma Vista systems. This was prior to the acquisition by the applicant of the Boyes Springs and Agua Caliente systems. Rates on these two systems were last fixed by this Commission in 1916 by Decisions No. 3900 and No. 3906. In the instant proceeding, the Commission is asked to fix the rates not only upon these two systems recently acquired but also upon the Sonoma Vista system, applicant stating that it desired to make the rate structure on the three systems uniform.

Since the Commission has already determined the value of the Sonoma Vista system, it need not in this proceeding reconsider that property except as to additions and betterments, and may inquire into the value of Boyes Springs and Agua Caliente properties alone. But, in arranging a uniform rate schedule applicable to the Sonoma Vista system as well as the Boyes Springs and Agua Caliente systems, it will be necessary to consider the value of and the revenues derived from each of these divisions of applicant's entire system.

It should be noted that each of these water systems was formerly under separate ownership and that they have been acquired by applicant with the idea, no doubt, that they are geographically a unit and that they could be operated more economically as a single system. The applicant in Application No. 12946 asked this Commission to value the Sonoma City and the Sonoma Vista and the El Verano systems as a single unit, and this Commission accordingly valued these properties as a whole and fixed a rate schedule therefor, based upon the reasonable annual charges for their operation. There is therefore no basis for now cutting off the Sonoma Vista, Boyes Springs and Agua Caliente systems and treating them together for rate-fixing purposes as entirely distinct from the Sonoma City system. The water use on these three

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systems as distinguished from the Sonoma City system is largely of the summer resort character and therefore it appears desirable that a uniform rate schedule applicable to this class of service on all of applicant's systems located outside of Sonoma City should be determined in this proceeding. In Decision No. 18419, dated June 1, 1927, the Commission established the value of the properties of the Sonoma City, El Verano and Sonoma Vista systems for rate-fixing purposes.

For the purpose of this proceeding, R. E. Savage, one of the Commission's engineers, made an appraisal of the properties of the Sonoma Vista, Boyes Springs and Agua Caliente systems, based on the estimated original cost as of December 31, 1927.

A summary of the above valuations, showing the totals of the several systems which constitute applicant's present operative plant and also the grand total of the combined systems as of December 31, 1927, is set out below.

Summary of Valuations.

Total for Sonoma City, El Verano and Sonoma Vista systems as allowed for the rate base in Decision No. 18419 (exclusive of the $25,000 estimated cost of proposed improvements)	$60,000 00	
Deduct for Sonoma Vista system as allowed	13,525 00	
Total value Sonoma City system as of June 30, 1926	$46,475 00	
Net additions and betterments, Sonoma City system, June 30, 1926, to December 31, 1927 (approximate cost)	940 00	
Total value Sonoma City system as of December 31, 1927		$47,415 00
Total Sonoma Vista system as of December 31, 1927	$18,427 00	
Total Boyes Springs system as of December 31, 1927	9,623 00	
Total Agua Caliente system as of December 31, 1927	4,403 00	
Total of above three systems located outside of Sonoma City		32,453 00
Grand total of applicant's combined systems as of December 31, 1927		$79,868 00

The corresponding total depreciation annuity computed on the 5 per cent sinking fund basis as submitted by the Commission's engineers, after allowing for the certain additions and betterments installed on the Sonoma City system, follows:

Sonoma City system	$795 00
Sonoma Vista system	387 00
Boyes Springs and Agua Caliente systems	209 00
Total depreciation annuity	$1,391 00

Applicant submitted a statement showing a total of $30,784 as the book costs of the above mentioned three systems located outside of Sonoma City, which total included the sum of $9,000 for the Boyes Springs and Agua Caliente systems, being the actual purchase price.

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The following tabulation gives the operating revenues and expenses, exclusive of depreciation, of the combined systems for the year 1927 as submitted by applicant:

	Operating revenues 1927	Maintenance and Operating expenses 1927
Sonoma City system	$9,252 52	$4,277 81
Sonoma Vista system	1,865 11	1,894 01
Boyes Springs system	799 83	494 51
Agua Caliente system	1,455 19	1,003 03
Totals of combined systems	$13,372 65	$7,669 36

As a result of an inspection and analysis made of applicant's book accounts of the 1926 and 1927 operations, the Commission's engineer submitted an estimate of $1,590 for the future annual maintenance and operation expenses of the Boyes Springs and Agua Caliente systems. This Commission in said Decision No. 18419 in the recent rate proceeding involving only the Sonoma City and the Sonoma Vista systems allowed the sum of $6,200 as a reasonable amount for the maintenance and operation expenses to be included in the annual charges to be returned from rates.

It appears therefore that the total $7,790 is a reasonable allowance for future maintenance and operation expenses for applicant's entire system operated as a unit. Based upon a consideration of the evidence submitted in this proceeding and the findings set out above as to the proper and reasonable annual charges for future operation of the utility, the following tabulation shows the results of operation for the year 1927 under the rates at present in effect. In this tabulation, the Sonoma City and Sonoma Vista plants, on which an increase in rates was recently granted by the Commission in its Decision No. 18419, in Application No. 12946, has been segregated from the Boyes Springs and Agua Caliente plants for the purpose of comparison.

	Sonoma City and Sonoma Vista Plants	Boyes Springs and Agua Caliente Plants	Total Combined Plants
Operating revenues	$11,118 00	$2,255 00	$13,373 00
Maintenance and operating expenses	$6,200 00	$1,590 00	$7,790 00
Depreciation annuity	1,182 00	209 00	1,391 00
Total operating expenses	$7,382 00	$1,799 00	$9,181 00
Net operating revenue	$3,736 00	$456 00	$4,192 00
Investment—estimated original cost	65,842 00	14,026 00	79,868 00
Interest return	5.7%	3.2%	5.2%

Considering the results of operations for the Boyes Springs and Agua Caliente plants as set out above, it appears that some adjustment should be made in the rates of said plants.

The meter rates at present in effect on the Sonoma City and Sonoma Vista systems, as established by the Commission's Decision No. 18419,

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issued June 1, 1927, and also those at present in effect on the Boyes Springs and Agua Caliente systems, as established by the Commission in 1916, are as follows:

Sonoma City and Sonoma Vista Systems—Regular Meter Rates.

Monthly minimum charges—

⅝ x ¾-inch meter	$2 00
¾-inch meter	2 50
1 -inch meter	3 50
1½-inch meter	5 50
2 -inch meter	8 00

Monthly quantity rates—

0 to 5,000 gallons, per 1,000 gallons	$0 40
5,000 to 10,000 gallons, per 1,000 gallons	25
10,000 to 25,000 gallons, per 1,000 gallons	20
All over 25,000 gallons, per 1,000 gallons	15

Summer Resort Rates.

Applicable only to service outside of Sonoma City system and particularly in the El Verano and Sonoma Vista districts.

Annual charge payable in advance, entitling consumer to 3,000 gallons of water each month for any period of six consecutive months $12 00

Where water is used in excess of the above allowance of 3,000 gallons per month, the regular monthly minimum charges and quantity rates shall apply, provided, however, that any consumer within the summer resort class may receive service under the regular schedule of rates by paying in advance the sum of $24, entitling such consumer to 5,000 gallons of water per month for each of twelve consecutive months.

Fire Hydrants.

Owned and installed by city, county or fire district, each per month	$1 50
Owned and installed by the company, each per month	2 00

All other municipal service charged for at the regular meter rates.

Boyes Springs and Agua Caliente Systems—Meter Rate Schedule.

(a) $6 annually to be paid in advance.

(b) In addition to the above annual charge, the payment for each month during which water is used is as follows:

Meter Rates.

For 250 cubic feet, or less	$0 50
For next 1,750 cubic feet, per 100 cubic feet	20
All over 2,000 cubic feet, per 100 cubic feet	15

At the present time, applicant's systems are practically 100 per cent metered.

The record of water use shows an average of 557 consumers on the combined systems for 1927, of which total there were 120 consumers served from the Sonoma Vista system and 150 from the Boyes Springs and Agua Caliente systems. The consumers having the summer resort character of water use totaled about 70 on the Sonoma Vista system and about 90 on the Boyes Springs and Agua Caliente systems.

The Sonoma Vista, Boyes Springs and Agua Caliente districts served by applicant are sparsely settled and still in the development stages as compared with the area in the city of Sonoma served. These distribution systems, in order to supply the proper and adequate service and demand for water during the few months when the summer residents occupy their premises, would be considered overbuilt for supply of the present number of consumers. Rates sufficiently high to net a full interest return on the investment in plant for these combined districts would be unduly high and even prohibitive for the present consumers to pay.

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The above mentioned rate schedule in effect for the Sonoma Vista district appears to be fair and reasonable under the conditions obtaining. It is equally clear, considering the intermittent service demanded on these two other systems, that proper service can not be maintained under the existing rates in effect on these systems. The testimony and evidence submitted at the hearing disclose inadequate service and very poor pressures for consumers on certain portions of the Agua Caliente system, especially during the peak use of water during the summer season. Applicant should install such necessary improvements on this system as will remedy these inadequate service conditions. A rate schedule for service rendered on the Boyes Springs and Agua Caliente systems of the same form as that at present in effect for the Sonoma Vista system will be established in the following order:

ORDER.

Sonoma Water and Irrigation Company, a corporation, having made application to this Commission as entitled above for authority to charge increased rates for water service on its Sonoma Vista, Boyes Springs and Agua Caliente systems, a public hearing having been held thereon, the matter having been submitted and the Commission now being fully advised in the premises:

It is hereby found as a fact that the rates now charged by Sonoma Water and Irrigation Company, a corporation, for water supplied to its consumers on the Boyes Springs and Agua Caliente systems are unjust and unreasonable in so far as they differ from the rates herein established, and that the rates herein established are just and reasonable rates to be charged for such service, and basing its order upon the foregoing findings of fact and upon the statements of fact contained in the preceding opinion;

It is hereby ordered, that Sonoma Water and Irrigation Company, a corporation, be and it is hereby authorized and directed to file with the Railroad Commission of the State of California, within twenty days from the date of this order, the following schedule of rates for water delivered to its consumers on the Boyes Springs and Agua Caliente systems, said schedule to become effective as hereinafter provided.

Regular Meter Rates.

Applicable to permanent consumers or any consumer who has received water service for a period of twelve consecutive months.

Monthly minimum charges—

¾ x ¾-inch meter	$2 00
¾-inch meter	2 50
1-inch meter	3 50
1½-inch meter	5 50
2-inch meter	8 00

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Each of the foregoing "Monthly Minimum Charges" will entitle the consumer to that quantity of water which the monthly minimum charge will purchase at the "Monthly Quantity Rates" set out below.

Monthly quantity rates—

0 to 5,000 gallons, per 1,000 gallons	$0 40
5,000 to 10,000 gallons, per 1,000 gallons	25
10,000 to 25,000 gallons, per 1,000 gallons	20
All over 25,000 gallons, per 1,000 gallons	15

Summer Resort Rates.

Annual charge payable in advance, entitling consumer to 3,000 gallons of water each month for any period of six consecutive months $12 00

Where water is used in excess of the above allowance of 3,000 gallons per month, the following schedule shall apply:

Monthly quantity rates—

0 to 3,000 gallons included in annual charge.	
3,000 to 10,000 gallons, per 1,000 gallons	$0 25
10,000 to 25,000 gallons, per 1,000 gallons	20
All over 25,000 gallons, per 1,000 gallons	15

Where water service is used for a period greater than the above six consecutive months, the regular monthly minimum charges and quantity rates shall apply, provided, however, that any consumer within the summer resort class may receive service under the regular schedule of rates by paying in advance the sum of $24, entitling such consumer to 5,000 gallons of water per month for each of twelve consecutive months.

Fire Hydrants.

Owned and installed by city, county or fire district, each per month	$1 50
Owned and installed by the company, each per month	2 00

All other municipal service charged for at the regular meter rates.

It is hereby further ordered, that the authority herein granted shall become effective only upon supplemental order of this Commission to be granted upon the installation, in a manner acceptable to this Commission, of the following improvements:

(1) Increased storage capacity of not less than 50,000 gallons at the Agua Caliente source of supply, to be located at an elevation not lower than the elevation of the present storage tank.

(2) Increased storage capacity of a minimum of 25,000 gallons at the Sonoma Vista source of supply, to be located at such elevation to afford increased pressure within reasonable limits.

(3) Installation of a distribution main, not smaller than 4 inches internal diameter, from the end of the present 4-inch main at state highway and Park avenue to the source of supply at Agua Caliente.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this seventeenth day of April, 1928.

DECISION No. 19617.

IN THE MATTER OF THE APPLICATION OF CORONA CITY WATER COMPANY, A CORPORATION, FOR AN INCREASE IN RATES.

Application No. 13979.

Decided April 17, 1928.

RATES—WATER UTILITY.—Corona City Water Company, operating in Riverside County, authorized to increase rates.

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E. H. Mitchell, for Applicant.
Walter S. Clayson, City Attorney, for City of Corona.

CARR, *Commissioner*.

OPINION.

Corona City Water Company, a corporation, engaged in the public utility business of supplying water for domestic, industrial and municipal purposes to the inhabitants of the city of Corona, Riverside County, makes application in this proceeding for authority to increase its rates.

The application alleges in effect that the present rates charged are noncompensatory, being insufficient to provide the interest return which applicant is reasonably entitled to receive on the fair value of the properties devoted to the public use.

A public hearing was held in this matter at Corona on January 12, 1928, and the matter is now under submission and ready for decision.

The schedule of rates at present in effect was established by this Commission in its Decision No. 7651, issued June 1, 1920, 18 C. R. C. 280, and is as follows:

Minimum Monthly Payments.

For ⅝-inch meter	$1 00
For ¾-inch meter	1 50
For 1 -inch meter	2 00
For 1½-inch meter	3 00
For 2 -inch meter	5 00

Measured Rate Schedule.

0 to 500 cubic feet, per 100 cubic feet	$0 20
500 to 1,000 cubic feet, per 100 cubic feet	15
1,000 to 2,000 cubic feet, per 100 cubic feet	12
Over 2,000 cubic feet, per 100 cubic feet	08

The following rates were established by the Commission in Decision No. 2054, dated January 8, 1915, and have been in effect since February 1, 1915:

Rates for Fire Service and Other Municipal Uses.

4-inch fire hydrants off 4-inch main, or larger mains, each per month	$1 00
Fire hydrants off smaller diameter than 4-inch, each per month	25
Water for flushing sewers, per month	40 00
Water for street sprinkling, per 100 cubic feet	075

Testimony was presented by witnesses for the company and the Commission respecting cost of the applicant's property and its value, revenue and operating expenses and prospects for the future, a careful consideration of all of which leads to the conclusion that the present rate structure of the company is not fairly compensatory and that applicant is entitled to charge somewhat higher rates than those now in effect.

The rate structure authorized in the order is not out of line with those charged by other water companies comparable to this and should, with a reasonable increase in business, produce a revenue which will yield the company a reasonable return upon the fair value of its property.

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I recommend the following form of order:

ORDER.

Corona City Water Company, a corporation, having made application to this Commission for authority to increase its rates, a public hearing having been held thereon, the matter having been submitted and the Commission now being fully advised in the premises:

It is hereby found as a fact that the present rates of Corona City Water Company, in so far as they differ from the rates herein established, are unjust and unreasonable and that the rates herein established are just and reasonable rates to be charged by said company for water service.

Basing its order upon the foregoing findings of fact and upon the other statements of fact in the opinion preceding this order;

It is hereby ordered, that Corona City Water Company be and it is hereby authorized and directed to file with this Commission, within twenty days from the date of this order, the following schedule of rates, said rates to be charged for all service rendered subsequent to the thirtieth day of April, 1928.

Meter Rates.

Minimum monthly charges—

For ⅝-inch meter	$1 25
For ¾-inch meter	1 75
For 1-inch meter	2 50
For 1½-inch meter	4 50
For 2-inch meter	6 00
For 3-inch meter	10 00

Each of the foregoing "Minimum monthly charges" will entitle the consumer to the quantity of water which that minimum monthly charge will purchase at the following "Monthly quantity rates."

Monthly quantity rates—

For 600 cubic feet, or less	$1 25
Next 1,400 cubic feet, per 100 cubic feet	16
Next 3,000 cubic feet, per 100 cubic feet	13
Next 10,000 cubic feet, per 100 cubic feet	10
Over 15,000 cubic feet, per 100 cubic feet	08

Municipal Use.

1. Water used for street sprinkling and sewer flushing, by computed or measured quantity, per 100 cubic feet	$0 08
2. For each fire hydrant owned by the city, installed on a 4-inch, or larger, pipe main	1 50
For each fire hydrant owned by the company, installed on a 4-inch, or larger, pipe main	2 00
For each fire hydrant owned by the city, installed on smaller than 4-inch pipe mains	50
For each fire hydrant owned by the company, installed on smaller than 4-inch pipe mains	75
3. All other municipal use of water, including public buildings, schools and irrigation of parks and grounds, to be charged for at regular meter rates.	

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this seventeenth day of April, 1928.

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DECISION NO. 19618.

IN THE MATTER OF THE APPLICATION OF CORCORAN TELEPHONE EXCHANGE, A CORPORATION, FOR AN ORDER INCREASING RATES.

Application No. 14146.

Decided April 17, 1928.

RATES—TELEPHONE.—Corcoran Telephone Exchange authorized to increase rates and to provide continuous service.

Garfield R. Jones, for Applicant.
Ernest Irwin, for California Independent Telephone Association.

BY THE COMMISSION.

OPINION.

Corcoran Telephone Exchange, a corporation, applicant in this proceeding, requests the Railroad Commission to issue its order fixing rates which will permit applicant to earn a return on its investment after making certain improvements in service which have been requested by applicant's patrons.

A public hearing in this matter was held before Examiner Gannon at Corcoran on February 28, 1928, at which time evidence was taken and the matter submitted.

Applicant furnishes exchange telephone service in the city of Corcoran, Kings County, and vicinity, in Kings and Tulare counties, California. Connection is made at Corcoran with the lines of The Pacific Telephone and Telegraph Comapny by which toll telephone and telegraph service to other points is made available to applicant's patrons. Service through applicant's central office is available from 7 a.m. to 10 p.m., daily, and, up to the present time, no exchange service has been rendered between the hours of 10 p.m. and 7 a.m. Lack of service between the hours of 10 p.m. and 7 a.m. has failed to meet the needs of a considerable number of applicant's patrons, according to the testimony of several witnesses. All those making requests for continuous hours of service in Corcoran were under the impression that the cost of such additional service would of necessity be borne by the subscribers of applicant in the form of increased rates for service, and no one appeared to offer any objection to the proposed change. Applicant signified its desire to render service as desired by its patrons and asked that rates be fixed to provide an adequate revenue therefor. Although, generally speaking, the cost of continuous service in a community the size of Corcoran will be relatively high per subscriber station served, and such service is seldom furnished in exchanges of similar size, the record in this particular proceeding indicates a persistent demand for such service at a reasonable rate and there appears no good reason why continuous service should not be rendered by applicant. Rates

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will be fixed in the order following on condition that continuous service be made available by applicant before such rates may be made effective.

A valuation of its property submitted by applicant showed an appraised value on the reproduction cost new basis, undepreciated, of $20,101, including materials and supplies. This valuation was made by H. N. Kalb and was based on an inventory taken as of March 7, 1927. The Commission's engineer, F. M. Casal, attempted to check this inventory in the field, but due to wholesale changes, which had been made in the plant since the early part of the year 1927, he found such procedure to be impracticable. A new inventory of this plant was made by the Commission's engineer with the assistance of applicant and an appraisal based on this inventory was put in evidence by Mr. Casal and showed a total valuation of applicant's operative telephone properties, including materials and supplies, on the undepreciated historical reproduction cost basis, as of February 1, 1928, of $14,303. Materials and supplies were estimated at a total value of $233. The valuation submitted by Mr. Casal was not contested by applicant.

It appears that applicant's cable plant is being utilized to its capacity and that in order to provide service to new patrons considerable reinforcement of the outside plant will be necessary. This will be reflected in the amount of capital which applicant will require in conducting its business in the future, and a reasonable amount will be included in the rate base for this purpose. The rate base found reasonable in this proceeding is as follows:

Valuation as of February 1, 1928, less materials and supplies	$14,070 00
Estimated additions and betterments, February 1, 1928, to July 31, 1928	2,100 00
Estimated amount for materials and supplies and working cash	780 00
Reasonable rate base for the period February 1, 1928, to January 31, 1929	$16,950 00

Applicant submitted with its application an income statement for the period January 1, 1927, to October 1, 1927, purporting to show that its operations over that period resulted in a loss in excess of $400. The Commission's engineer introduced an operating statement, which was not questioned by applicant, showing that under applicant's present rates and service an estimated net profit of over $1,000 would be realized during the year period, February 1, 1928, to January 31, 1929. While it appears that some reasonable doubt might exist as to the necessity of a substantial increase in applicant's rates under the present conditions of operation, it is evident that when applicant's expenses are increased by approximately $1,400 per annum, which the evidence shows will be required to provide continuous exchange service, additional revenue will be requisite to provide a return on the investment. It appears, however, in view of expected future growth, that rates as high as proposed by applicant will not be required to provide a fair return on

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applicant's investment. Further modification of applicant's proposed schedule should be made with reference to the rate for "farmer line" service. Applicant suggests that this rate be left as at present, namely $7.50 per year per station with no minimum charge per circuit. Although the present rate per station may be adequate, it appears that the furnishing by applicant of the equivalent of individual line wire and switchboard facilities when only one station is served, at the rate for one station, is not equitable, considering exchange rates effective within the primary rate area. Schedules of reasonable rates, under the conditions of service which applicant will be expected to meet, are set forth in the order following.

Estimated results of operations under the rates shown in the order, which is a part of this decision, assuming such rates to be in effect over the entire period February 1, 1928, to January 31, 1929, are set forth in the table following:

Exchange revenue	$6,165 00	
Toll revenue	3,450 00	
Total revenue		$9,615 00
Maintenance expenses less depreciation annuity	$900 00	
Depreciation annuity	935 00	
Traffic expense	3,650 00	
Commercial and general expenses	2,400 00	
Total expenses		7,885 00
Net telephone operating revenue		$1,730 00
Uncollectible operating revenue	$50 00	
Taxes	490 00	
Total deductions from net telephone operating revenue		540 00
Available for return		$1,190 00

In the above estimates allowance has been made for additional expenses in connection with twenty-four-hour operation and the maintenance of applicant's books of account.

ORDER.

Corcoran Telephone Exchange having made application to the Railroad Commission for an order authorizing the revision of its rates for telephone service, a public hearing having been held, the matter having been submitted, and being now ready for decision:

The Railroad Commission of the State of California hereby finds as a fact that the rates now charged by Corcoran Telephone Exchange would be unjust and unreasonable in the event that continuous exchange service be established and that the rates hereinafter set forth will be just and reasonable under said conditions.

Basing its order on the foregoing findings of fact and on such other findings of fact as are set forth in the opinion preceding this order;

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It is hereby ordered, that Corcoran Telephone Exchange, after a showing to the Railroad Commission that it has made available to its patrons continuous twenty-four-hour exchange telephone service, and upon supplemental order from the Railroad Commission, may file and make effective rates for service in accordance with the schedules and map shown in Exhibits "A" and "B," attached hereto.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this seventeenth day of April, 1928.

(*Exhibits "A" and "B" omitted in printing.*)

DECISION No. 19626.

IN THE MATTER OF THE APPLICATION OF PAUL DERKUM AND CHAS. E. SANSOME, FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE PASSENGER AUTO STAGE SERVICE AND TO CARRY EXPRESS PACKAGES BETWEEN SANTA MARIA, MARICOPA AND INTERMEDIATE POINTS.

Application No. 14359.

Decided April 18, 1928.

CERTIFICATE—AUTOMOTIVE TRANSPORTATION.—P. Derkum and C. E. Sansome authorized to operate auto passenger and express service between Santa Maria and Bakersfield via Maricopa.

Rollin Laird, for Applicant.
Alfred Siemon, for Kern County Transportation Company and Boyd & Mattly, Protestants.
Earl A. Bagby, for California Transit Company, Protestant.
Mark Thompson, for American Railway Express Company, Protestant.

BY THE COMMISSION.

OPINION.

Paul Derkum and Chas. E. Sansome, copartners, have made application for a certificate of public convenience and necessity to operate passenger and express transportation between Santa Maria, Maricopa and Bakersfield and all points intermediate.

A public hearing herein was conducted by Examiner Williams at Maricopa.

Applicants propose one service each way daily between Santa Maria and Bakersfield, for the transportation of passengers and express not exceeding 100 pounds, the schedule requiring five hours each way. The distance by the route sought to be traversed is 127 miles between termini. The service is available to all points between termini, except between Conner's Station and Bakersfield, where applicants agreed to do no local business. The details of the rates, schedules and equipment are stated in Exhibits "A," "B" and "C" attached to the application.

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Applicants are experienced stage operators, Mr. Derkum now conducting similar service between Bakersfield and Arvin, between Bakersfield and McKittrick, and seasonal operation between Los Angeles and Wheeler Hot Springs. Applicant Sansome now conducts service between McKittrick, Fellows, Taft and Maricopa.

Applicants propose competitive service between Bakersfield and Maricopa, a distance of 42 miles, but between Maricopa and Santa Maria, will traverse a route now without any service, through Cuyama Pass over a new highway recently constructed at an expense of approximately $1,750,000, for a distance of 85 miles. There was no protest as to the operation of the route between Maricopa and Santa Maria, all the testimony in reference to this operation being affirmative of the need of such service. So far as this portion of the operation is concerned, the record is abundant that a service is needed, although fair consideration of the testimony justifies the admonition to applicants that the territory is not populous except at terminals, and that the business will be pioneering where applicants may expect to sustain loss in the earlier period of operation. This they testified they expected and were prepared to sustain.

Protestants appearing at the hearing objected to the establishment of a competitive service between Bakersfield and Maricopa, on the ground that there is now established between Bakersfield and Taft two operations, one by the Kern County Transportation Company and the other by Boyd & Mattly. From the testimony of Earl C. Cook, traffic manager of the Kern County Transportation Company, it appears the two operations are by alternate schedules. These schedules daily are now maintained between Bakersfield and Taft by these two established services, four of the services traversing the route via Greenfield Corners, and two by way of Panama-Old River. Mr. Cook pointed out that in 1920 the same services conducted thirteen schedules daily and transported 100 passengers daily each way. At the present time, traffic has been reduced to six schedules daily with 25 passengers each way. The equipment provided includes 11- and 18-passenger cars. Mr. Cook explained that decrease of activity in the West Side oil fields and the increasing number of private automobiles had reduced the business, there being, he said, in Taft alone one automobile for every three inhabitants. The operation, he testified, has paid no dividends in years. The schedules of these two protesting carriers connect with the service between Maricopa and McKittrick now maintained by C. E. Sansome, and in this way, direct transportation from Taft to Maricopa, a distance of approximately eight miles, has been maintained. The same connections are also made at Taft for Fellows and McKittrick, according to the testimony of all parties. This connection was prompt and satisfactory until recent changes in schedules on the north and

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south service of the California Transit Company through Bakersfield necessitated changes in the schedules between Bakersfield and Taft. These changes were not met by adjustment of Sansome schedules, and hence there have been complaints of delay in making connection with the eastbound stages at Taft. According to the testimony of Mr. Sansome and others, this could be improved by readjustment of the Sansome schedules.

This lack of connection is all that is adduced to show inefficiency of the present method of transportation between Bakersfield and Maricopa. Under the circumstances it does not appear justifiable to admit competition between these points. It appears rather that if a certificate is granted applicants, it should contain a restriction that no passengers are to be transported between Bakersfield and Maricopa, especially in view of the fact that the alleged inadequacy of service may be easily remedied by one of the applicants in the present proceeding adjusting his schedules properly. In addition, there is the further reason that applicants herein seek to transport passengers between Bakersfield and Maricopa at a rate of $1.50, which is the same rate applicable between Bakersfield and Taft plus the 50 cents additional charge between Taft and Maricopa. If the rates now charged by the present operators are not capable of providing profit, it is doubtful if the operation at the reduced rate, although the mileage is slightly less (five miles), would be profitable. In addition, applicants provide only one service daily between these termini, while protestants are maintaining six. To adopt a rate which apparently is offered to divert traffic and later may require increase, ought not in this instance have influence for applicants.

The main service proposed by applicant is the transportation of persons and express between the south San Joaquin Valley, particularly that portion included in Kern County, to Santa Maria where many rail and stage connections may be made for points north and south of Santa Maria, but particularly to San Luis Obispo, Pismo Beach and Santa Barbara and the oil fields in the Santa Maria region. This service, as explained by State Senator J. I. Wagy, of Bakersfield, former supervisor of Kern County, is by the shortest route over a newly constructed road that was intended to facilitate vehicular traffic to points between San Luis Obispo and Santa Barbara. It is also useful in the interchange of labor between the oil fields of Kern County and those over the range on the coast. Mr. Wagy testified there are now but fourteen miles of unpaved road between Bakersfield and Maricopa over the route chosen by applicants, and that the route through Cuyama is a high grade, well kept mountain road with minimum grades. It has been taken over by the State Highway Department and two camps are maintained to keep it in first class condition.

Outside of the testimony of applicants as to the investigations made

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as to the practicability of operation and the patronage to be expected, the need of a service is affirmatively shown by the testimony of Mr. Wagy, Mr. J. R. Blanco, manager of the Caliente and Cuyama ranches; Mr. L. B. Nourse, secretary of the Kern County Chamber of Commerce; E. L. Johnson, a rancher in the Cuyama Valley; Sam Kennedy, editor of the *West Side Chronicle* at Maricopa; C. A. Wixon, secretary of the Pismo Beach Chamber of Commerce, and Sam G. Whittlesy, civil engineer of Pismo Beach. In addition, a telegram from J. A. Chambers, secretary of the Santa Maria Chamber of Commerce, was offered in evidence endorsing the proposed service in behalf of nineteen business men of Santa Maria who had expected to attend the hearing.

As to the service of points intermediate between Bakersfield and Maricopa, applicants produced George J. Ferster, conducting meat and vegetable establishments at Bakersfield and Maricopa, Eugene Schimpff, operating the Petrolia lease about two miles east of Maricopa, and W. H. Wathen who testified. As protestants did not oppose service to the intermediate points for passengers, it appears that if a service be established, it should be made available to all who now have no service, and this includes all points between Conner's Station and Maricopa.

The application was opposed by the Kern County Transportation Company operating between Bakersfield and Paso Robles via Lost Hills, on the ground that this line now made a connection at Paso Robles for Santa Maria; that any new service would impair their ability to continue this service; that protestants also operate a weekly service from Taft to Lost Hills furnishing a connection by this means to Paso Robles, and from there to Santa Maria. According to the testimony of W. H. Neill, auditor of Kern County Transportation Company, from April, 1927, to February, 1928, but five tickets were sold from Taft to Santa Maria, three via Lost Hills and two via Bakersfield. Only nineteen tickets were sold at Bakersfield during the same period. It appears from this fact that if there is to be traffic of any volume between West Side oil fields and Santa Maria, it will be traffic to be developed by more direct and cheaper transportation, such as applicants offer herein.

According to Thomas Lyle, ticket agent at the Taft Union Stage station, he has only six inquiries each week for coast points. He also testified that as Sansome does not sell tickets over his line, there is no way to measure his traffic as to region or destination.

It appears from the testimony of these witnesses, however, that residents of Taft, Maricopa and other west side points would have to make the journey to Bakersfield and thence by way of Saugus or by way of Paso Robles to reach points between Santa Barbara and San Luis Obispo or the northern resorts or cities, and this would

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involve high cost and an unusually long journey. The only other means is the weekly connection at Lost Hills. The same journey proposed by applicants would reduce the distance between west side points via Bakersfield to Santa Maria from 296 miles by way of Castaic, and from 222 miles by way of Paso Robles, to 127 miles via Maricopa. There would also be a proportionate reduction in fares.

Applicants' request for authority to transport express matter between Bakersfield and Maricopa was opposed by the American Railway Express Company whose rates are materially less than those offered by applicants, and whose service consists of one train each day carrying express, leaving Bakersfield at 9.30 a.m., arriving at Maricopa at 1.35 p.m., and returning at 2.05 p.m., arriving at Bakersfield at 4.30 p.m. Free delivery service is maintained by American Railway Express in Maricopa, Taft and Bakersfield. This protestant also showed by an exhibit that its gross express shipments between Bakersfield and Maricopa in both directions during October, 1927, aggregated only 4458 pounds. As applicants' service is no improvement upon this service, and as the testimony of witnesses is not satisfactory that there is a real need for a new express service between these points, the order should contain the same restriction as to express service as to passenger service, and should be granted as thus restricted.

ORDER.

Paul Derkum and Charles E. Sansome, copartners, having made application for a certificate of public convenience and necessity to establish automobile service for passengers and express between Santa Maria and Bakersfield, via Maricopa, a public hearing having been held, the matter having been duly submitted and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment of automobile service for passengers and express as proposed by applicants between Santa Maria and Bakersfield via Maricopa, and all intermediates, provided, however, that no passengers or express may be transported between Bakersfield and Conner's Station and points intermediate, nor between Bakersfield and Maricopa, over the following route:

West on Nineteenth street, south on Oak street, west on Panama-Greenfield road to Old River, south on Conner's road, and west on Maricopa Flat road to Maricopa, thence west on the state highway via Cuyama to Santa Maria; and

It is hereby ordered, that a certificate of public convenience and necessity therefor be and the same hereby is granted subject to the following conditions:

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1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicants shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes, the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this eighteenth day of April, 1928.

DECISION NO. 19634.

JOHN O. FORSTER, S. YOUNG, EDWARD SEXTON, GUY WILLIAMS, LEO E. WINDOLPH, L. P. MORRISON, S. M. BATHGATE, J. S. MALCOM, H. HALLADAY, ROBERT SCOTT, C. E. CRUMRINE, H. LARKIN, CLAYTON H. LANDRETH, O. J. GUILBERT, OSCAR ROSENBAUM, GORDON ROBERTSON, HUGH McNINCH, JOHN J. HARRISON, ARLEY H. LECK, WILLIAM BATHGATE, JR., M. F. FORSTER, J. L. HUNTER, C. R. COOK, ALBERT PRYOR, HENRY VANDERLECK, J. ROY SMITH, AARON BUCHHEIM, CARL H. HANKEY, FERRIS F. KELLY, R. Y. WILLIAMS,

vs.

SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY, A CORPORATION.

Case No. 2488.

IN THE MATTER OF THE INVESTIGATION UPON THE COMMISSION'S OWN MOTION INTO THE RATES, CHARGES, CLASSIFICATIONS, CONTRACTS, PRACTICES, RULES AND REGULATIONS OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY, A PUBLIC UTILITY CORPORATION.

Case No. 2491.

Decided April 18, 1928.

RATES.—Electric and steam rates of San Diego Consolidated Gas and Electric Company ordered reduced.

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R. Y. Williams, for John O. Forster, San Juan Capistrano Chamber of Commerce, and 160 other interested parties.
J. J. Deuel and *L. S. Wing*, for California Farm Bureau Federation.
James O'Keefe, City Attorney of San Diego, for City of San Diego.
Sweet, Stearns and Forward and *Chickering and Gregory*, by *Allen Chickering* and *W. C. Fox*, for San Diego Consolidated Gas and Electric Company.

CARR, *Commissioner*.

OPINION.

The complaint of John O. Forster et al., vs. San Diego Consolidated Gas and Electric Company alleges unreasonably high electric rates and poor service conditions prevailing in the vicinity of San Juan Capistrano. The rates of this company not having been before the Commission for investigation for a considerable period of time and in order that an unrestricted investigation might be had, the Commission made its order instituting an investigation of such scope that rates and practices of gas, electric and steam heat departments of this company were all involved.

The above matters were consolidated and a public hearing was had at San Diego on Friday, March 16, 1928. At this time a member of the Commission's engineering staff presented an exhibit and testified in support thereof as to the present position of the company under its existing rate structure. This testimony indicated that the company in the year 1927, after making due allowance on account of a voluntary reduction in rates in that year, was on an earning basis of about $400,000, in excess of a return at the rate of 7½ per cent on its investment. Upon this showing being made, the company stated that it was agreeable to an order being made reducing its rates so as to decrease its income approximately $400,000 a year, and if the order of the Commission went no further than this, it was willing to submit both proceedings upon the evidence presented.

Representatives of the consumers present at the hearing urged that such an order be made rather than to suffer the delay incident to a protracted rate proceeding. While a slightly different result might be obtained if such a proceeding were had, when the element of delay is considered, it is apparent that the consumers will be better off to have an order made at once along the lines to which the company assents.

The gas rates of this company have been controlled for some years by the price of fuel oil, and a considerable reduction from the gas rates originally established has accrued to this group of consumers. Substantially all the excess earnings of the company are being made in its electric and steam heat departments, and the rate reduction herein ordered is confined to those branches. The reductions in electric rates made by the company in 1927 have been given consideration in determining the spread of the reductions.

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As the agricultural consumers have not benefited from any rate reduction in recent years, this group will receive a somewhat larger reduction than other groups of consumers.

The form of agricultural schedule has been the subject of much consideration. Representatives of the California Farm Bureau Federation, who appeared for the agricultural interests have strongly urged the type of schedule in use in northern California, and such a schedule has been adopted. It is generally recognized that this form of schedule more equitably distributes the cost of service as between individuals of the group than does the existing form of schedule. While the new schedule will give a reduction of 15 per cent to the entire agricultural group, a few consumers' bills will be increased slightly, while other consumers will receive reductions ranging from little or nothing to considerably in excess of 15 per cent.

The question of poor service conditions in the vicinity of San Juan Capistrano, as brought in issue by the complaint of J. O. Forster et al. will be left to informal investigation of the Commission's engineering staff.

I recommend the following form of order:

ORDER.

Certain residents of Orange County having made formal complaint to the Railroad Commission alleging that the electric rates of San Diego Consolidated Gas Company are excessive, and the Railroad Commission, upon its own motion, having instituted an investigation into all rates and charges of the San Diego Consolidated Gas and Electric Company, said matters having been consolidated for hearing and decision, public hearing having been held and the matters having been submitted and now ready for decision:

The Railroad Commission of the State of California hereby finds as a fact that the rates and charges of the San Diego Consolidated Gas and Electric Company are unjust, unreasonable and discriminatory in so far as they differ from the rates and charges set forth herein, which rates and charges are declared to be just and reasonable rates;

It is hereby ordered, that

(1) San Diego Consolidated Gas and Electric Company charge and collect for electric and steam service, now supplied under filed schedules, the rates set forth in Exhibit "A" attached hereto and made a part hereof; such rates to be filed with this Commission on or before April 20, 1928, and to become effective for metered service with bills based on regular periodic readings taken on and after April 20, 1928, and for flat rate service delivered on and after May 1, 1928.

(2) San Diego Consolidated Gas and Electric Company charge and collect for electric power supplied to the city of San Diego, effective

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with bills based on meter readings taken on and after April 20, 1928, in accordance with the following energy charges:

First	100,000 kw.h. per month at	$0.019	per kw.h.
Next	150,000 kw.h. per month at	0.015	per kw.h.
All over	250,000 kw.h. per month at	0.011	per kw.h.

(3) That certain contract entered into by and between San Diego Consolidated Gas and Electric Company and San Diego Electric Railway Company dated January 1, 1925, is hereby modified with respect to the energy charges as follows:

That portion reading:

For the first 300 kilowatt hours per month per kilowatt of maximum demand, one and thirty-one hundredths (1.31) cents per kilowatt hour of alternating current energy.

For all over 300 kilowatt hours per month per kilowatt of maximum demand, ninety-six hundredths (.96) cents per kilowatt hour of alternating current energy.

is hereby changed to read:

For the first 300 kilowatt hours per month per kilowatt of maximum demand, one and twenty-three hundredths (1.23) cents per kilowatt hour of alternating current energy.

For all over 300 kilowatt hours per month per kilowatt of maximum demand, ninety hundredths (.90) cents per kilowatt hour of alternating current energy;

such modification of energy charges to be effective with billing based on meter readings taken on and after April 20, 1928, and the contract in all other respects to remain unchanged.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighteenth day of April, 1928.

EXHIBIT "A."

SCHEDULE No. L-1

(Superseding Schedule No. 1—Electric)

General Residence and Commercial Lighting.

This schedule applies to all classes of alternating current for lighting service; also for electric energy used by electric lamp socket appliances, single phase motors of not to exceed three horsepower total capacity, X-ray machines and other services used directly or indirectly for the production of light.

Territory.

Entire territory served.

Rate.

	Gross	Net
First 12 kw.h. or less per meter per month	$1.00	$0.90

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	Cents per kw.h.	
Next 188 kw.h. per meter per month	7	6
Next 800 kw.h. per meter per month	--	5
Next 2,000 kw.h. per meter per month	--	4.5
Next 2,000 kw.h. per meter per month	--	4
Over 5,000 kw.h. per meter per month	--	3

Minimum Charge.

Single phase motors exceeding three horsepower total connected load may be supplied through the lighting meter, in which case the minimum charge shall be $1 per month per horsepower connected.

In cases of special service to summer cabins the minimum charge will be $15 per meter per season, payable in advance at the beginning of the summer season, which will normally commence as of May 1st of each year.

Prompt Payment Discount.

All bills are rendered at the gross rate shown above. A discount reducing the bill to the net rate is made for prompt payment in case bills are paid on or before the date due as shown on the bill rendered.

SCHEDULE No. L-2

(Superseding Schedule No. 17—Electric)

Large Commercial Lighting Service.

This schedule is applicable to alternating current energy supplied for lighting, heating, cooking and incidental power, applicable to service furnished at standard voltages. Company supplies transformers.

Territory.

Entire territory served.

Rate.

Demand charge:

First 50 kilowatts or less of maximum demand	$150.00	per month
All over 50 kilowatts of maximum demand	1.50	per kilowatt per month.

Plus—

Energy charge:

	Cents per kw.h.
First 500 kw.h. per month	5
Next 1,500 kw.h. per month	5
Next 3,000 kw.h. per month	2
All over 5,000 kw.h. per month	1.5

Special Conditions.

(1) Determination of demand: The maximum demand will be measured by demand meters or indicators to be furnished and installed by the company. The maximum demand in any month will be the average number of kilowatts indicated or recorded by the above meters in that 15-minute interval in which the consumption of electric energy hereunder is greater than in any other 15-minute interval in the month.

In the case of hoists, elevators, welding machines, furnaces and other installations where the energy demand is intermittent, or subject to violent fluctuations, the company may base the consumer's maximum demand upon a 5-minute interval instead of a 15-minute interval.

(2) The total charge for any one month is the sum of the demand and energy charges.

(3) The demand charge for any one month shall be based on not less than 50 per cent of the highest demand determined during the preceding eleven months.

SCHEDULE No. L-3

(Superseding Schedule No. 9—Electric)

Street and Highway Lighting—Bracket Arms.

Applicable to city, towns, lighting districts or supervisory lighting districts for service to street or highway lighting installatons using series incandescent lamps mounted on bracket, mast arm or center suspension construction, and supplied from overhead lines, where company owns and maintains the entire equipment.

Territory.

Entire territory served.

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Rate.

Candle power lamps	*Rate per lamp per month burning all night Installations of 0–25 lamps*	*26 to 100*	*Over 100*	*Reduction per lamp for midnight service*
60	$1.97	$1.67	$1.57	17 cents
80	2.22	1.87	1.77	22 cents
100	2.43	2.08	1.93	28 cents
250	3.45	2.90	2.70	50 cents
*400	4.40	3.65	3.40	66 cents
*600	5.50	4.75	4.15	88 cents

*Includes a diffusing globe, special highway reflector, or equivalent special reflector.

Special Conditions.

(a) For the purpose of calculating rates for less than all night service, it will be assumed that the average hour of turning off all night service is 5.30 a.m. and the average hours of nightly services used:
All night service (4000 hours per year) 11 hours per night.
Midnight service (2000 hours per year) 5½ hours per night.
(b) Contracts are made for a period of one to five years.
(c) If one municipality or lighting district adjoins a second, and the lighting of both are fed from the same circuit, then the two districts shall earn a rate based on their combined installation, provided the hours of burning and the characteristics of the circuits are the same.

SCHEDULE No. L-4

(Superseding Schedule No. 10—Electric)

Series Municipal Street Lighting—Ornamental Post.

Applicable to service to electrolier or other lighting systems where the customer owns the equipment and the company supplies energy at one or more central points.

Territory.

Entire territory served.

Rate.

Candle power of lamp	*Rates per lamp per month Midnight service*	*All night service*
100	$1.00	$1.55
250	1.80	2.70
400	2.60	3.85
600	3.60	5.05
1,000	4.75	7.25

Special Conditions.

(a) Company renews all burned out lamps, repairs broken globes and refractors, cleans refractors not oftener than every three months. Company repairs wiring in posts and makes minor repairs to wiring, but where replacement of underground conduit is required, the company will do the same at the expense of the customer. Company also paints and cleans posts as needed.
(b) Contracts are made for a period of one year.

SCHEDULE No. L-5

(Superseding Schedule No. 3—Electric)

Signs, Displays and Outline Lighting.

This schedule applies only to exterior lighting, such as signs, displays, billboards, outline lighting and street streamers.

Territory.

Entire territory served.

Rate.

	Rate per month
Burning to 11.00 p.m.	.9 cent per watt of connected load
Burning to 12.00 p.m.	1.0 cent per watt of connected load
Burning to 1.00 a.m.	1.1 cents per watt of connected load
Burning to 2.00 a.m.	1.2 cents per watt of connected load
Burning to 3.00 a.m.	1.3 cents per watt of connected load
Burning to 4.00 a.m.	1.4 cents per watt of connected load
Burning to 5.00 a.m.	1.5 cents per watt of connected load
Burning to 6.00 a.m.	1.6 cents per watt of connected load

Patrol charge $1 per sign per month.

Minimum Charge.

The minimum charge for all the foregoing rates will be at least $1, to which $1 will be added for patrol service.

Special Conditions.

(a) Contracts will be required for a period of one year.
(b) Bills are payable monthly in advance.

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SCHEDULE No. L-6

(Superseding Schedule No. 11—Electric)

Miscellaneous Street Lighting Installations.

This schedule covers certain ornamental lighting installations.

Territory.

Applicable to the San Diego District only.

Rate.

(1) Seventh and Upas streets, 5 1-light posts, 60 watt, 110 volt, $1.5755 per post per month, operated all night.
(2) Kensington Park, 4 1-light posts, 100 watt, 110 volt, $2.4725 per post per month.
12 2-light posts, 40 watt, 110 volt, $2.4150 per post per month.
Lamps burning until midnight.

Special Conditions.

(1) The company maintains and furnishes free lamp and globe renewals in all the above schedules.
(2) Schedule for Seventh and Upas streets, (1) is for no definite period. Contract for Kensington Park, (2) is for five years.
(3) Customer furnishes the original installation.

SCHEDULE No. L-7

(Superseding Schedule No. 12—Electric)

Ornamental Multiple Block Lighting.

This schedule applies to various multiple ornamental post street lighting, posts containing from five to seven globes, with a total of 220, 270 and 340 watts per post.

Territory.

Applicable to the city of San Diego only.

Rate.

Five- and seven-globe posts, 270 or 340 watts per post, $4.60 per post per month, burning to midnight.
Five-globe posts, 220 watts per post, $4.60 per post per month, burning all night.

Special Conditions.

(1) Company renews all burned out lamps and broken globes and maintains entire system.
(2) Contracts are for a period of one year.
(3) City furnishes the original installation.

SCHEDULE No. C-1

(Superseding Schedule No. 18—Electric)

Combination Rate for Residential Service.

Applicable to residential domestic cooking, space heating or water heating, with which residential lighting may be combined. Not applicable to lighting alone.

Territory.

Entire territory served.

Rate.

Applicable to residences, individual flats or individual apartments of seven active rooms or less.

	Gross	*Net*	
First 12 kw.h or less per meter per month	$1.00	$0.90	per kw.h.
Next 18 kw.h. per meter per month	.07	.06	per kw.h.
Next 150 kw.h. per meter per month	.03	.03	per kw.h.
Excess kw.h. per meter per month	.02	.02	per kw.h.

For residences, individual flats or individual apartments of more than seven rooms, the second block of 7 cents gross or 6 cents net shall be increased 5 kw.h. for each additional room.

Minimum Charge.

Fifty cents per month per kilowatt of connected capacity of domestic power, heating and cooking apparatus, but not less than $3 per month.

The connected capacity for the determination of the minimum bill of customers served under this rate will be determined by taking the sum of only the electrical apparatus which is permanently connected, such as electric refrigerators, motors, ranges and other cooking and heating apparatus not in the class known as socket appliances.

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Special Conditions.

(1) These rates apply only where customer installs and uses cooking or water heating appliances other than lamp socket appliances of at least 4 kilowatt capacity. Heating appliances other than cooking or water heating appliances will not be counted in order to receive this rate.

(2) Active rooms are all rooms, except bathrooms, halls, porches, cellars and attics.

(3) Connected load will be taken as the name plate rating of all heating, cooking and water heating apparatus other than lamp socket devices which may be connected at any one time taken to the nearest 1/10 kilowatt.

(4) Single phase power service of 3 horsepower or less may be combined under this schedule, in which case each horsepower of connected load shall be considered equivalent to 1 kilowatt of connected load in determining the minimum charge.

(5) Service under this schedule will be granted in the first instance for not less than 12 months.

(6) In case of purely seasonal service, the minimum bill may be made accumulative on a 12 months' basis. For air heating the service will be considered seasonal where the connected load in air heaters equals or exceeds the connected load of other appliances.

SCHEDULE No. C-2

(Superseding Schedule No. 13—Electric)

Battery Charging, Electric Heating and Cooking.

This rate applies to alternating current energy for domestic and commercial heating and cooking, laundries for ironing, special heating service and small motor generator sets or rectifiers used for charging batteries.

Territory.

Entire territory served.

Rate.

First 150 kw.h. per meter per month	3 cents per kw.h.
Next 250 kw.h. per meter per month	2.5 cents per kw.h.
All over 400 kw.h. per meter per month	2 cents per kw.h.

Minimum Charge.

(1) Heating and cooking:
Fifty cents per kilowatt of connected load per month but not less than $3 per month.

(2) Battery charging, rectifiers, etc.:
(a) Single phase: $1 per hp. per month but not less than $3 per month.
(b) Three phase: $1 per hp. per month but not less than $5 per month.

Special Conditions.

(1) Service under this schedule is granted in the first instance for not less than 12 months.

(2) In cases of seasonal service the minimum bill may be made accumulative on a 12 months' basis.

(3) Single phase motors of ½ horsepower or less may be used on this schedule, in which case each horsepower of connected load shall be considered equivalent to one kilowatt of connected load in determining the minimum charge.

(4) No lighting service shall be allowed under this schedule. Convenience outlets shall not be allowed connected to this circuit and all utilization equipment must be permanently connected.

SCHEDULE No. P-1

(Superseding Schedules Nos. 5 and 6—Electric)

General Power Service.

Applicable to alternating current for general commercial and industrial power service and to commercial heating and cooking service and rectifier service.

Territory.

Entire territory served.

Rate.

House power of connected load	*Rate per kw.h. for monthly consumption of*			
	First 50 kw.h., per hp.	*Next 50 kw.h., per hp.*	*Next 100 kw.h., per hp.*	*200 and over kw.h., per hp.*
1– 4 hp.	5.0 cents	2.4 cents	1.8 cents	1.5 cents
5– 9 hp.	3.8 cents	2.3 cents	1.7 cents	1.4 cents
10– 24 hp.	3.6 cents	2.2 cents	1.6 cents	1.3 cents
25– 49 hp.	3.2 cents	2.1 cents	1.5 cents	1.2 cents
50– 99 hp.	2.6 cents	1.9 cents	1.4 cents	1.1 cents
100–249 hp.	2.3 cents	1.6 cents	1.3 cents	1.0 cent
250–499 hp.	2.1 cents	1.4 cents	1.2 cents	0.9 cent
500 hp. and over	2.0 cents	1.2 cents	1.1 cents	0.9 cent

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Minimum Charge.

First 50 hp. of connected load.....$1.00 per horsepower per month
Over 50 hp. of connected load..... .75 per horsepower per month
But in no case less than $5 per month for 3 phase service.

Special Conditions.

(a) Voltage. This schedule of rates will apply to alternating current service rendered at standard voltage in accordance with the rules and regulations of the company. All necessary transformers to obtain such voltage will be supplied, owned and maintained by the company.

(b) Any consumer may obtain the rate for a larger installation by guaranteeing the rates and minimum charge applicable to the larger installation.

(c) In case of intermittent service customer may pay for all energy used at the above rates without a minimum charge by the payment of a service charge of $5 per connected horsepower per year in addition to the energy charge. This service charge is payable at the rate of $1 per month per horsepower for the first five months, beginning with the first month after selecting such basis.

(d) The above rates and minimum charges may be based on horsepower of measured maximum demand instead of horsepower of connected load, provided the installation consists of at least two motors and has a total connected capacity of at least 50 hp., in which case the horsepower of demand on which the rates and minimum charges will be based will not be less than 40 per cent of the connected load and in no case shall the minimum be less than $50 per month.

(e) The maximum demand in any month shall be the average horsepower input (746 watts equivalent) indicated or recorded by instruments to be supplied, owned and maintained by the company and at the company's expense upon the consumer's premises, adjacent to watt-hour meters, in the 15-minute interval in which the consumption of electric energy is greater than in any other 15-minute interval in the month, or, at the option of the company, the maximum demand may be determined by test.

In case of connected loads of 500 hp. or over, the company may base the consumer's maximum demand upon a 30-minute interval instead of a 15-minute interval.

In the case of hoists, elevators, welding machines, furnaces and other installations where the energy demand is intermittent, or subject to violent fluctuations, the company may base the consumer's maximum demand upon a 5-minute interval instead of a 15-minute interval.

(f) Maximum demand meters when used will be installed and maintained by the company at its expense.

(g) Where the primary use of power is seasonal the minimum charge may, at the option of the consumer, be made accumulative over a twelve months' period.

(h) Wherever, upon test, any motor is found to be delivering more than 125 per cent of its capacity as indicated by its name plate rating, the company may disregard the name plate rating and base its charges upon the actual output as calculated from test.

(i) Customer may not decrease his connected load for the purpose of avoiding payment of minimum bills.

(j) Alternating current metered to motor generator sets, mercury arc rectifiers, A. C. Commens-Ares, or A. C. motion picture projection machines, where such energy is used for the purpose of serving motion picture projection machines only, and not used for general lighting purposes, may be billed to the consumer under this schedule. No other lighting service is included under this schedule.

SCHEDULE No. P-2

(Superseding Schedule No. 14—Electric)

Wholesale Power Service.

This schedule is applicable to energy supplied for all power purposes when the connected load in motors is 100 horsepower or greater, energy to be delivered and measured at primary potential of 2200, 4000 or 11,000 volts, consumer supplying necessary transformers.

Territory.

Entire territory served.

Rate.

(1) Demand charge:
$1.25 per kw. of maximum demand.
Plus—
(2) Energy charge:
First 50,000 kw.h. per month..... 1.2 cents per kw.h.
Over 50,000 kw.h. per month..... .8 cents per kw.h.

The above rate is subject to an increase or decrease on the basis of $0.0005 per kilowatt hour for each full 10-cent increase or decrease in the cost of oil above or below the price of $1.05 per barrel, f.o.b. the company's oil tanks San Diego.

Minimum Charge.

The minimum charge will be at least $24 per connected horsepower per year.

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Special Conditions.

(a) The total charge per month is the sum of the demand and energy charge.

(b) The maximum demand in any month will be the average kilowatt delivery in the 15-minute interval in which the consumption of electric energy is greater than in any other 15-minute interval in the month, but in no case will such maximum demand be less than 50 per cent of the total connected load. For maximum demands occurring between the hours of 11 p.m. and 6 a.m. of the following day, only 60 per cent of such maximum demands shall be considered when computing demand charge.

(c) Lighting will be allowed under this schedule of rates provided the connected load in lighting does not exceed 5 per cent of the connected load in power. The customer must furnish his own transformers for the purpose of reducing the voltage to that of his lighting circuit. All energy furnished for both power and light shall be measured by means of one meter.

SCHEDULE No. P-3

(Superseding Schedule No. 7—Electric)

Agricultural Power Service.

Applicable to general agricultural and reclamation service, including pumping, feed choppers, milking machines, heating for incubators, brooders, poultry house lighting and general farm use, but excluding cooking and general lighting service.

Territory.

Entire territory served.

Rate.

Size of installation	*Annual service charge per hp.*	*Energy charge in addition to the service charge Rate per kw.h. for consumptions per hp. per year of First 1000 kw.h.*	*All over 1000 kw.h.*
2– 4 hp.	$6.50*	1.8 cents	1.4 cents
5–14 hp.	5.50	1.6 cents	1.3 cents
15–49 hp.	5.00	1.55 cents	1.2 cents
50–99 hp.	4.50	1.5 cents	1.1 cents
100 hp. and over	3.90	1.4 cents	1.0 cent

* In no case will the total annual service charge be less than $13.

Special Conditions.

(a) Agricultural year:
Under this schedule the agricultural year shall commence with the regular meter reading taken in April and end with the regular meter reading taken in April of the succeeding year.

(b) Payment of service charges:
Service charges will be payable in six equal monthly installments during the months of May to October, inclusive.

(c) Guaranteeing rates for larger size installation:
Any consumer may obtain the rate for a larger installation by guaranteeing the rates and service charge of that larger installation.

(d) Voltage:
This rate applies to service rendered at 220, 440 or 2200 volts at the option of the consumer. All necessary transformers to obtain such voltage to be installed, owned and maintained by the company.

(e) Contracts:
The company may require a contract for service under this schedule for a period not to exceed three years when service is first rendered and thereafter from year to year.

(f) Connected load:
The above rates and annual charges will be based on the largest load that may be connected at any one time. For the purpose of calculating service charge one kilowatt of lighting or heating load will be rated at one horsepower.

(g) Charges for service begun or discontinued during the agricultural year:
When service is first begun or permanently discontinued during the agricultural year, the demand charge will be prorated according to the proportion of the six months' season from April 1st to September 30th during which service is taken. Consumers permanently increasing or decreasing their connected load will have their demand charges adjusted upon the same basis, and the relative position in the energy blocking will be maintained.
No adjustment will be made when installations shut down for a few months or for the balance of the season.

SCHEDULE No. P-4

(Superseding Schedule No. 4—Electric)

Direct Current Power Service.

Applicable to 500-volt direct current power service for elevators and variable speed motors to which three phase alternating current is not easily adapted.

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Territory.

Applicable to the central business district of San Diego.

Rate.								*Cents per kw.h.*
First	100	kw.h.	per	meter	per	month		7
Next	100	kw.h.	per	meter	per	month		6
Next	100	kw.h.	per	meter	per	month		5
Next	200	kw.h.	per	meter	per	month		4
Next	500	kw.h.	per	meter	per	month		3
All over	1,000	kw.h.	per	meter	per	month		2.5

Minimum Charge.

One dollar per horsepower of connected load per month.

SCHEDULE No. P-5

(Superseding Schedule No. 15—Electric)

Stand-by or Auxiliary for Lighting or Power Service.

Applicable to stand-by or breakdown service supplied to customers whose premises are regularly supplied with light or power from a privately owned source of supply and to other electric service where the company must stand ready at all times to supply electricity for lighting or power service, but where the use of electric service is not of a usual, regular, or continuous character. The maximum load served under this schedule is 1000 kilowatts.

Territory.

Entire territory served.

Rate.

The rate schedule used will be that applicable to the class of business if continuously supplied. The minimum specified herein shall replace the minimum charge specified in such schedule, but the kilowatt-hour charge, readiness to serve charge, and all other conditions specified in said rate schedule, shall remain unchanged.

Where the appropriate rate schedule carries a higher minimum charge than the minimum specified herein, the former shall be substituted for that provided herein.

Minimum Charge.

The minimum charge for each kilowatt or fraction thereof of maximum load which the company agrees to stand ready to supply shall be $1 per kilowatt per month of such maximum load, but not less than $20 per month.

Special Conditions.

(1) In case the customer desires the company to stand ready to supply the entire connected load of the customer's plant, then such maximum load will be estimated by the company based on tests and other information available. In case the customer desires the company to stand ready to supply a number of kilowatts less than the maximum demand of the entire customer's plant, or an isolated part thereof, as estimated by the company, then the company shall install a suitable circuit breaker enclosed in a steel box equipped with lock, the cost thereof to be paid by the customer. The company shall have sole control of the adjustment and operation of said circuit breaker, and it is to be in no way interfered with by the customer. This circuit breaker shall be set to break the connection with the company's service in case the customer's maximum demand shall at any time materially exceed the number of kilowatts which the company is obligated to stand ready to supply. If said circuit breaker should open, due to excess of customer's demand above the number of kilowatts agreed on, the company will renew the connection upon due notice and upon receiving satisfactory assurance that the customer will reduce his maximum demand to the specified figure, or contract for an additional capacity, such contract to be for a period of one year from that date.

(2) Metering and billing for stand-by service shall be kept separate and distinct from the metering and billing for regular exclusive service supplied at the same location.

(3) This schedule will only be given where the customer will sign a contract for at least one year.

SCHEDULE No. P-6

(Superseding Schedule No. 16—Electric)

Wireless Telegraph Service.

Applicable to service to wireless telegraph installations.

Territory.

Entire territory served.

Rate.

Established power rates in all districts served.

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Minimum Charge.

For installations requiring 2 kw. transformers or less	$2.50 per month
For installations requiring in excess of 2 kw. and not exceeding 5 kw. transformers	3.75 per month

Discount.

As set forth under established power rates.

Special Conditions.

Installation charge for 2 kw. transformer or less $10.00
Installation charge for transformer in excess of 2 kw. and not exceeding 5 kw. 15.00
For permanent commercial installations, established power schedules may apply.
In the event that service is continued for a period of twelve consecutive months, the installation charge herein provided will be refunded.

SCHEDULE No. 1

(Superseding Schedule No. 1—Steam)

General Service.

Applicable to general steam heating service.

Territory.

A portion of the business district of the city of San Diego, California, as described in the preliminary statement.

Rate.

Consumption in pounds of condensation	*Rate per 1000 lbs.*
First 75,000 pounds per month	$1.50
Next 75,000 pounds per month	.90
Next 150,000 pounds per month	.80
Over 300,000 pounds per month	.70

Minimum Charge.

Cubic feet to be heated	*Minimum monthly charge*
Up to 50,000	$2.50
50,001 to 100,000	4.50
100,001 to 150,000	6.25
150,001 to 200,000	7.75
200,001 to 250,000	9.25
250,001 to 300,000	10.50
300,001 to 350,000	11.50
350,001 to 400,000	12.50
400,001 to 450,000	13.50
450,001 to 500,000	14.50
500,001 to 600,000	16.00
600,001 to 700,000	17.50
700,001 to 800,000	18.50
800,001 to 900,000	19.25
900,001 to 1,000,000	20.00
Over 1,000,000	20.00

Special Condition.

Service under this schedule is granted in the first instance for not less than one year

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DECISION No. 19637.

IN THE MATTER OF THE APPLICATION OF GEORGE R. BLISS FOR ORDER AUTHORIZING THE ALTERATION OF THE BOUNDARIES OF THE TERRITORY IN WHICH HE IS AUTHORIZED TO SUPPLY IRRIGATION WATER.

Application No. 14415.

Decided April 20, 1928.

SERVICE—WATER UTILITY.—G. R. Bliss, operating a water system near Carpinteria, Santa Barbara County, authorized to eliminate certain lands from his area of service.

George R. Bliss, in propria persona.

BY THE COMMISSION.

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OPINION.

George R. Bliss, owner of a public utility water system in the vicinity of Carpinteria, has made application to the Railroad Commission for permission to eliminate from the boundaries of the district in which he was authorized to supply irrigation water under Decision No. 14586 on Application No. 10476, certain areas shown on a map marked "Exhibit No. 2," and filed at the hearing.

A public hearing herein was conducted by Examiner Williams in Santa Barbara.

Applicant now desires to exclude from the area which he is authorized to serve the properties of D. L. Ellery, M. L. Cravens, Jack Rock, F. W. Hoffman, G. E. Franklin, H. W. Moore and Mrs. H. J. Russell, altogether about two hundred acres. The circumstances under which he asks authority to exclude this area from demand are, first, that in order to supply this area, it will be necessary for him to develop an additional water supply at his plant, which is located more than one mile west of these lands, as the present supply would be insufficient to provide for them, and while he is able to make the investment necessary to supply the additional water, he would be burdened with litigation if he attempted so to do. This litigation would arise from property owners in the vicinity of his source of supply who allege that this would take the percolating waters underneath their land and deliver them where there could be no recovery in the area from which they were taken; that this would impoverish their supply, and that such removal is contrary to statute, and contrary to decisions of the Supreme Court of the State of California (*Hudson* vs. *Dailey*, 156 Cal. 617; *Miller* vs. *Bay City Water Co.*, 157 Cal. 256; *Katz* vs. *Walkinshaw*, 141 Cal. 116).

Applicant testified that he was served with notice by William H. Yule and seventeen other landowners in the area from which he pumps percolating water that any attempt to serve additional area than that now served by him would be met with litigation seeking injunction or damages. Copy of this notice was filed as "Exhibit No. 3."

Another reason urged by applicant is the fact that none who are to be omitted from his service area has ever asked for or demanded service of water, and further that the area in which they are located has its own percolating flow as is evidenced by pumps now in use by several.

John William Heaney, of the law firm of Heaney, Price and Postel of Santa Barbara, testified that the landowners immediately adjacent to Bliss's well had agreed with Bliss that the elimination of the lands included in the present application by the applicant would satisfy the complaining landowners and prevent litigation.

The sole supply of applicant herein is a well producing approximately fifty inches per day, and appears to be a sufficient supply for

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the area now being served. In view of the fact that no demand has been made upon applicant for water in the area to be withdrawn, and that no one now in this area protested the elimination as asked for, and as any attempted enlargement of his service would invoke litigation over the removal of the percolating waters available to him, we believe the application should be granted.

ORDER.

George R. Bliss having filed application with the Railroad Commission to eliminate from the area in which he is authorized to sell irrigation water, a public hearing having been held, and the matter having been duly submitted;

It is hereby ordered, that applicant herein be and he hereby is authorized to eliminate from his area or domain of service those portions originally included by Decision No. 14586 on Application No. 10475, as shown by Exhibit No. 2 filed herein; and

It is hereby further ordered, that applicant herein shall file on or before May 31, 1928, a corrected map of his service area, showing the exact area eliminated and the area retained, and until such map is so filed and accepted, this order shall not become effective.

For all other purposes, the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twentieth day of April, 1928.

DECISION No. 19638.

IN THE MATTER OF THE APPLICATION OF L. A. THORNEWILL FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND OPERATIONS TO POINTS BEYOND SANTA CRUZ TO AND INCLUDING SWANTON.

Application No. 14428.

Decided April 20, 1928.

CERTIFICATES—AUTO TRUCK.—L. A. Thornewill authorized to extend auto truck service from Swanton to San Francisco by way of Davenport and Santa Cruz.

MONOPOLY AND COMPETITION—ADMISSION INTO OCCUPIED TERRITORY—CHARACTER OF EXISTING SERVICE.—An auto truck line which has for nearly a year neglected to withdraw an apparently unreasonable rate can not, when an application is filed by another line, demand that it be protected from competition.

Derlin and Brookman, by *Douglas Brookman*, for Applicant.
Harry A. Encell and *M. A. Sanborn*, by *M. A. Sanborn*, for Coastside Transportation Company, Protestant.

BY THE COMMISSION.

OPINION.

The applicant holds an operative right for the transportation of farm products from Capitola and Santa Cruz to San Francisco over

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the state highway by way of Alma and Saratoga. He seeks to extend his right about 15 miles beyond Santa Cruz along the coast highway to Davenport and Swanton. The Southern Pacific Railway's branch line extending northwestward from Santa Cruz terminates at Davenport, which is about 12 miles from Santa Cruz. The paved highway also terminates at Davenport, Swanton being a small settlement about three miles beyond Davenport on an unpaved highway. The latter road follows the ocean shore northward through Pescadero and Half-moon Bay to San Francisco. The Coastside Transportation Company holds an operative right between Santa Cruz and San Francisco over such coast road and protests the proposed operation of Thornewill over any portion thereof. A public hearing was held before Examiner Rowell in Santa Cruz on March 21, 1928.

The Davenport-Swanton district produces a large quantity of vegetables, particularly artichokes, Brussels sprouts and peas. For the Los Angeles and eastern markets the producers use the rail service from Davenport, but it appears that when such products are consigned to the San Francisco market, transportation by motor truck is preferred. The applicant has served the growers in the Davenport-Swanton district for several years without having secured a certificate for such operations from the Railroad Commission. His explanation for not having heretofore applied for a certificate is that his operations until recently have been irregular, and to those growers only who have called upon him for such service. Though the protestant did not emphasize the point that applicant has heretofore been wilfully operating over said route without a certificate, the Commission is convinced that the applicant, if not wilfully operating in violation of law, has been negligent in failing earlier to apply for a certificate covering such operations.

Applicant is now serving eight or ten of the largest growers in the Davenport district, hauling for them one to four tons of produce daily. There is no question that he is rendering a satisfactory service. Eight witnesses testified that they are shipping to San Francisco by the applicant's line, that his service is satisfactory, and that their needs require that it be continued. The Coastside Transportation Company introduced evidence to show that it has equipment sufficient to care for all the business originating in the Davenport area and that it is otherwise prepared to give adequate service. It has recently filed new tariffs which provide for a rate of 75 cents per 180 pounds crate, the rate formerly being $1.13 per crate. Thornewill's rate has at all times been $1 per crate. The distance from Davenport to San Francisco over the Coastside route is about 84 miles and practically the same as that traversed by Thornewill by way of Santa Cruz and Alma.

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The applicant stresses the importance of transporting such perishable commodities over well paved highways and introduced evidence tending to show that vegetables hauled by truck over the unpaved coast road did not arrive in San Francisco in good condition. The applicant's route is no doubt preferable, but the coast road is now being improved and should permit the Coastside Company to render shippers entirely satisfactory service. Since the running time over either route is not over five hours both carriers are able to collect vegetables picked during the day in the Davenport-Swanton district and deliver them in San Francisco in time for the early morning market.

In spite of the general equality in operative conditions between the two carriers, the Coastside Company has never enjoyed more than a negligible part of the business originating in this district. There can be but one explanation for this and that is the inequality in rates. The evidence shows that since its reduced rate became effective on March 17, 1928, the Coastside Company has obtained the business of two growers who previously used applicant's line. The Coastside Company secured its certificate to operate a through service on February 24, 1927, and since it thereafter for nearly a year neglected to withdraw an apparently unreasonable rate, it can not now demand that it be protected from competition.

We are of the opinion that the shippers in the neighborhood of Davenport and Swanton need the transportation service of the applicant, as well as that of the existing carrier, and that they will be benefited by the competition resulting. It is admitted that both carriers have been successful in their respective fields. The financial position of the protestant carrier can not be endangered because of such competition for it has never enjoyed the business in dispute. It is true that the applicant has in some degree been guilty of violation of law in continuing to operate in such territory without a permit, but we are of the opinion that under the circumstances he should not be denied the right to prove the public need for the continuance of his operations.

It should be stated that applicant's rate of $1 per crate on vegetables has at all times appeared in his tariffs as the transportation charge on such commodities from Snta Cruz to San Francisco and was fixed in his tariffs with the business originating from the whole Santa Cruz area, including Davenport and Swanton, in mind. As there are no commodities of this class produced in the Santa Cruz or Capitola area proper, no discrimination results. The proposed rates on all commodities are as set forth in Exhibit "A" attached to the application.

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ORDER.

L. A. Thornewill having filed the above entitled application to extend his present operative right for the transportation of freight between San Francisco and Santa Cruz to include Davenport and Swanton, a public hearing thereon having been held, the matter having been duly submitted and being now ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by L. A. Thornewill of an automotive truck service for the transportation of berries, fruits, vegetables, poultry and eggs from Swanton to San Francisco by way of Davenport and Santa Cruz and to serve points intermediate between Swanton and Santa Cruz, with the right to return empty containers without charge from San Francisco to Swanton and intermediate points, the same to be operated as an extension of the operative right for the transportation of such commodities from Capitola and Santa Cruz to San Francisco granted by Decision No. 17451, and not as a separate right.

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to L. A. Thornewill for such operations as a common carrier, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariffs of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer, or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twentieth day of April, 1928.

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Decision No. 19639.

H. P. WILLIAMS, B. C. BREWSTER, ALBERT DOUGLAS, ROBERT J. SNOW, WM. F. DONOVAN, PETE MITCHLER, AMON TANNER, LOUIS RAFETTA, ANTONE MALASPINA, ANNIE R. SCHAEFFLE, ETHEL ADAMS, JOHN HAUSELT, ANGELA MALASPINA, BERTATTA BROS., MALASPINA BROS., JOHN AIROLA, WM. S. KING AND CALAVERAS WATER USERS ASSOCIATION

vs.

UTICA MINING COMPANY, A COPARTNERSHIP, AND HOBART ESTATE COMPANY, EMMA ROSE AND JANE DOE, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF UTICA MINING COMPANY, A COPARTNERSHIP.

Case No. 2266.

Decided April 20, 1928.

SERVICE—WATER UTILITY.—Utica Mining Company, operating in Calaveras County, directed to provide adequate and nondiscriminatory water service.

DISCRIMINATION—SERVICE.—The extension of service to new consumers for mining purposes while concurrently refusing to supply further irrigation service results in unfair discrimination.

SERVICE—DISCONTINUANCE.—The Commission will not permit discontinuance of service to a consumer who has been receiving service for some ten years, on the ground that the use by such consumer of a ram for pumping water is very wasteful. Payment should be based upon the total gross amount of water delivered.

SERVICE—DUTY OF UTILITY TO RENDER—IN GENERAL.—"All persons residing within the service area of a public utility are entitled by legal right to service upon application therefor, without discrimination, to the reasonable extent of the utility's facilities, providing that extension of such new service will not unduly prejudice the rights of existing consumers to continued service."

SERVICE—IRRIGATION—ROTATION SYSTEM.—A rotation system of delivering water for irrigation purposes was recommended, provided that consumers would receive waters applied for in the quantities and at the times required.

Virgil M. Airola, Rowan Hardin and *Frank Folletti*, for Complainants.
Edward Van Vranken, for San Joaquin County.
J. W. Colebird, for San Francisco County Loan Company.
McCutchen, Olney, Mannon and Greene, by *Allen P. Mathew*, and *John T. Pigott*, for Defendants.

LOUTTIT, *Commissioner*.

OPINION.

This is a complaint brought by H. P. Williams and certain other consumers, together with the Calaveras Water Users Association, against Hobart Estate Company, a corporation, and Emma Rose, owners as tenants in common of certain mining properties, water and power systems, located mainly in Calaveras County and operated under the firm name and style of Utica Mining Company. Among other things, this company is engaged in the business of distributing and selling water for irrigation, domestic, power and mining purposes, and electric energy to the general public in the vicinity of Murphys, Douglas Flat, Vallecito, Carson Hill, Angels Camp and Altaville, Calaveras

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County. The complaint in general alleges in effect that the Utica Mining Company and its predecessors in interest have been engaged in the development, distribution and sale of water as a public utility in Calaveras County for more than sixty years last past; that, until the installation by said company of the Angels (hydro-electric) power plant in 1920, it freely and indiscriminately sold and distributed water to any and all applicants therefor under its system; that, since about the time of the installation of said Angels power plant and thereafter, defendants have adopted and maintained the practice and policy of unreasonably and arbitrarily reducing the quantities of water delivered to the irrigationists and other users, and have refused to deliver adequate and sufficient water to meet the requirements of the consumers; that defendants have also frequently, and without good and sufficient reason, refused to serve new applicants for irrigation service, although this policy has not been consistently maintained, and that, during dry seasons when there has been a scarcity of water, defendants have taken water improperly from the irrigation users in order to increase the water available to operate the Angels power plant. Wherefore, complainants ask that the Utica Mining Company be required to provide and adopt reasonable practices, rules and regulations and to furnish and maintain such service as shall prevent further damage and loss to crops and orchards now being served under its system.

Defendants by way of answer deny generally the essential allegations set out in the complaint and also deny that they are engaged as a public utility in the sale and distribution of water to the general public, excepting only the sale of water to the general public in the town of Angels Camp; and, among other things, allege that the present water system was installed by a predecessor in interest of defendants primarily for mining purposes and has at all times thereafter been maintained and operated solely for mining and power purposes; and further allege that, as an incident thereto, defendants are now supplying water as a public utility in the town of Angeles Camp; that, from time to time, when surplus water has been available therefor, they have also supplied such water as a matter of accommodation to persons owning or occupying lands in the vicinity of defendants' ditches; and, in connection with this service, admit that for many years last past they have refused to supply water for irrigation purposes to new consumers and that it has been their practice in times of water shortage to supply to the Angels power plant or mines such water as was required for the operation thereof, and that, by reason of these circumstances, it has been necessary to restrict and reduce the amount of water furnished and delivered to farmers and irrigationists and all other water consumers. Defendants furthermore allege that the gross income from the water supplied for irrigation purposes is less than the bare

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cost of operation and maintenance necessary to render such service and therefore request that the complaint be dismissed.

Public hearings were held in this matter at Angels Camp after all interested parties had been notified and given an opportunity to be present and be heard.

According to the testimony, the Union Water Company was organized and incorporated in 1854 and immediately thereafter commenced the construction of diversion works, flumes, reservoirs and canals to divert and store water from the North Fork of the Stanislaus River and convey it to various points in the vicinity of the town of Murphys, where it was spilled into Angels or Murphys Creek and Peppermint Creek, from which it was again collected and distributed by various ditches principally for mining purposes but also for domestic, agricultural, water power and industrial use in and near Murphys, French Gulch, Douglas Flat, Vallecito, Carson Hill, Albany Flat, Angels Camp, Altaville and Dogtown, in Calaveras County. On or about the year 1888, Hayward, Hobart and Lane acquired the Utica Mine in Angels Camp and during the next few years acquired other quartz mines in the vicinity which were operated by this group as the Utica Mining Company. A contract was made in 1888 by and between the latter and the Union Water Company providing for delivery of water to the Utica properties which were operated by water power and in 1890 it purchased all of the stock of the Union Water Company whose entire properties, after the termination of its corporate existence, were transferred to the Utica Mining Company, which has continued in the ownership and operation thereof to the present time. In 1898, the company built the Murphys power plant for the generation of hydroelectric power at a point above the town of Murphys where the main canal discharges into Angels Creek. Thereafter, in 1918, the Utica Mine was closed down and has so remained ever since. In 1920, the company installed another generating station called the Angels power plant, located on Angels Creek at Angels Camp.

Water is collected from the North Fork of the Stanislaus River and certain of its tributaries and stored in Silver Valley, Utica and Union reservoirs, located in Alpine County and having a combined storage capacity of 9000 acre-feet. From these reservoirs water is released into the natural stream channels from which it is later picked up and diverted into the Utica conduit some twenty-five miles below the reservoirs, at which point the company claims a water right to eighty-eight second-feet of water. The Utica conduit conveys the water approximately twenty-three miles to the Murphys power plant, below which the various distribution ditches for all other service take out. There are two small regulating reservoirs, the Ross and pipe reservoirs, of a total capacity of approximately eighty-two acre-feet, located on the

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ditch supplying Angels Camp. From the pipe reservoir, four pipe lines lead to Angels Camp for the municipal and domestic supply and the generation of power at the Angels power plant, which discharge into the natural channel of Angels Creek at an elevation below any of the area served by the company with water. The company also has certain rights to appropriate waters from the natural flow of Angels and Coyote creeks, but as these streams produce very little water after the month of June each year, the additional water supply is of little practicable value. Electric energy is also distributed by the company throughout the area for domestic, agricultural and industrial purposes.

In 1926, there were 134 consumers supplied with water for domestic, irrigation and mining purposes outside of the municipal system in Angels Camp, which supplied approximately 314 consumers. The rates in effect for ditch service for irrigation and mining purposes are 20 cents per miner's inch, day of twenty-four hours, above pipe reservoir, and 15 cents per inch below. The miner's inch being equivalent to 1/40 of a cubic foot per second, these charges for all practicable purposes are equivalent to $4 and $3, respectively, per acre-foot. Rates for domestic service outside of Angels Camp range from $1 to $3 per month, according to the use of water. These rates have been in effect for a great many years and were never established by the Railroad Commission.

Shortly after this complaint was filed, defendants herein made formal petition to the Commission in Application No. 13180 requesting authority to discontinue all service of water for irrigation, mining and domestic purposes, with the exception of the water furnished to the town of Angels Camp. By stipulation it was agreed by all interested parties that this matter be combined with said Application No. 13180 for hearing only and that all evidence so received be considered in either proceeding in so far as germane.

The matters herein complained of have been before the Commission informally for the last several years. Efforts to settle the complaints without formal proceedings proved of no avail, whereupon this complaint was filed by the water users, pending which the utility agreed to continue irrigation service upon an adopted temporary delivery schedule until final determination by the Commission.

In connection with the status of this water system as a public utility, counsel for defendants has stated that said defendants will not resist a finding by this Commission that the water service now under review is impressed with a public servitude. In view of the fact that this matter is discussed in some detail in the decision in the above mentioned Application No. 13180, it will be unnecessary in this proceeding to go

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further than to state that both the domestic and irrigation services of this company are unquestionably public utility in character.

The evidence shows that irrigation water and, in many cases, also domestic water has been supplied at one time or another over a period of many years to various ranches and houses in the vicinity and territory intervening roughly between Angels Camp, Murphys and Carson Hill. Service to all of these lands has not been continuous. At present about 400 acres are being served water for irrigation purposes, according to available records, which are not fully complete. The evidence, however, does show that in the past a considerably greater acreage has been served than is now receiving water from the company.

The defendants are also in the business of generating and distributing electricity and, as they are more favorably inclined to this service, they have consistently pursued for many years the policy of discouraging the use of water for irrigation and domestic use outside of Angels Camp for the obvious reason of diverting such waters for the generation of power during the summer months when the small storage capacity of the reservoirs necessarily results in a curtailment of power output. Although all water is first used at Murphys power plant for generating purposes, yet the Angels power plant is so located at the extreme lower end of the system that water run through Angels power plant can not thereafter be used for gravity irrigation purposes by the present consumers, who all reside at a higher elevation. This fixed policy on the part of defendants of discriminating against irrigation use not only has resulted frequently in loss of crops by many consumers but also has prevented any extensive or permanent development of the agricultural industry in the area served.

Although defendants have for the past several years generally and arbitrarily refused to supply new consumers with water for irrigation purposes or to permit old consumers to increase their acreage to any substantial extent, yet in numerous instances during the past two years they have extended service to new consumers for mining purposes and have also recently given service to a limited extent to the new tubercular sanatorium at Murphys, erected jointly by the counties of San Joaquin and Calaveras. While it is not intended to imply that the extension of service to these new consumers is improper or that they are not entitled to receive water from this utility, yet, in the light of concurrent refusal to supply further irrigation service, such action has resulted in unfair discrimination against other consumers and has created no small amount of dissatisfaction among the users of water for irrigation and those who would like to receive irrigation service.

The utility has taken quite a determined stand to discontinue service to one consumer who for several years has received water from one

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of the company's ditches from which he has pumped the water several hundred feet in elevation by means of a hydraulic ram for irrigation use upon his hillside ranch. The company claims that this consumer did not apply for water in the regular manner but installed the ram without its knowledge or consent and used water for one or more seasons before the service was discovered. The company further claims that it has never held itself out to deliver water for water power purposes and that the use of a ram for pumping water is very wasteful, beneficially delivering only a small part of the water necessary to operate it. The claims of the defendants are not supported by the evidence. Water is even now being delivered for water power purposes on the Adams ranch. In addition to this, in the early days of mining a large part of the water was used for water power generally throughout the system; in fact the Utica Mine itself for years was run entirely by water power. This particular consumer has been receiving water for ten years last past, for which the utility has sent bills and received payment. The Commission will not permit discontinuance or further interference with service to this consumer; to hold otherwise would without proper reason result in irreparable financial loss to the consumer and the ruination of his entire orchard. This service shall be continued to this consumer for use by him as in the past, it being understood that payment should be based upon the total gross amount of water delivered and that the spilled water from the operation of the ram also belongs to said consumer and may be used or disposed of by him in any manner he may see fit.

The testimony indicates that practically all of the consumers do not receive as much water now as in the past, although the utility claims that its records show to the contrary. However, as shown in the decision in Application No. 13180, the computations used by the company in estimating the quantities of deliveries are not based upon accurate measurements and are therefore mere approximations and not dependable. During the past several seasons, the utility admittedly has arbitrarily limited and restricted deliveries to a schedule based upon its estimated deliveries in the past. This has resulted in many consumers getting an insufficient "head" of water for economic irrigation of their lands. Many have not received the amount of water which they have received in the past and which is required for proper irrigation and, therefore, have been forced to reduce their acreages or lose their crops by inability to properly mature them through lack of water.

Defendants have contended that many of the consumers now supplied with water for irrigation purposes are not legitimately entitled to such service and have not the status of consumers. The reasons for such claims are somewhat obscure and it is difficult to reconcile such contention with the evidence. All persons residing within the service

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area of a public utility are entitled by legal right to service upon application therefor, without discrimination, to the reasonable extent of the utility's facilities, provided that extension of such new service will not unduly prejudice the rights of existing consumers to continued service. No authority was ever requested by this utility, nor granted by the Railroad Commission, permitting the refusal of further public utility irrigation service to new applicants therefor or limiting the service to any particular group of users. On the contrary, defendants have arbitrarily and without legal authority refused to supply new applicants with water for irrigation purposes and have in devious manners curtailed and restricted deliveries to regular water users. The result has been a gradual diminution of the gross amount of water supplied for irrigation purposes with a consequent saving of water available for the generation of power at the Angels power plant.

The evidence shows that the amount of water heretofore devoted by this utility to agricultural irrigation purposes has been arbitrarily and unreasonably restricted and diminished to such an extent that economical and efficient crop raising is practically impossible. The evidence further shows that all present water users, as well as any and all persons residing within the service area of this utility, are rightfully entitled to irrigation water service from this utility and to deliveries in such dependable quantities and at such times as in the judgment of said users is reasonably necessary to satisfy their individual requirements.

The record in this case shows that there is ample water available on this system to properly supply the irrigation needs of an area in excess of the area now served without interfering with the more recent demands of the Angels power plant. Until such time as defendants shall have made other arrangements acceptable to this Commission for the distribution of water for irrigation purposes in the territory now served by them, said defendants will be expected and required by this Commission to supply a reasonable and adequate water service to all present water users and any others properly entitled thereto.

The Commission has no objection to the adoption and use of a rotation system of delivering water for irrigation purposes; such a system is in fact recommended; provided, however, that in so doing the consumers are able to receive the waters for which they apply in the quantities and at the times required.

I recommend the following form of order:

ORDER.

Complaint as entitled above having been filed with this Commission, public hearings having been held thereon, the matter having been submitted and the Commission being fully advised in the premises;

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It is hereby ordered, that Hobart Estate Company, a corporation, and Emma Rose, owners as tenants in common of certain public utility properties operated under the fictitious firm name and style of Utica Mining Company, be and they are hereby ordered and directed as follows:

1. To supply hereafter without discrimination to any and all applicants for water service for any and all purposes whatsoever, within the area dedicated to water service by this utility, water in such quantities and at such times as said consumers may designate.

2. To file with this Commission, within thirty days from the date of this order, rules and regulations governing their relations with their consumers, said rules and regulations to become effective upon acceptance for filing by this Commission.

3. To file with this Commission, on or before the first day of June of each year, a complete copy of the schedule of deliveries of irrigation water to their consumers for the ensuing irrigation season.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twentieth day of April, 1928.

DECISION No. 19640.

ARIZONA EDISON COMPANY, A CORPORATION,

vs.

THE SOUTHERN SIERRAS POWER COMPANY, A CORPORATION.

Case No. 2367.

Decided April 20, 1928.

INTERSTATE COMMERCE.—Complaint of Arizona Edison Company for an order declaring prior rate orders void as a burden on interstate commerce and seeking reparation for charges collected in excess of contract rate dismissed.

INTERSTATE COMMERCE—POWER OF COMMISSION.—Complainant, purchasing electric current in California for resale in Arizona, having paid defendant utility rates fixed by the Commission, higher than those provided for in a prior contract, sought an order authorizing the charging of the contract rate, and awarding reparation of all sums collected in excess of such contract rate, on the ground that the order fixing rates imposed a direct burden on interstate commerce. On this theory, to declare such contract rates effective would be just as much an imposition of a burden on interstate commerce as would have been the fixing of rates in the earlier order.

INTERSTATE COMMERCE—POWER OF COMMISSION.—If the contention that previous orders fixing rates were void is accepted, there is now no burden to be removed and any order of the Commission to that effect would be an idle act. The Commission has no more power to interpret or pass upon the validity of a rate contract than it has, in its regulatory capacity, to fix the rates. Its power to determine rights under private contract is incident only to its general power to regulate.

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INTERSTATE COMMERCE—POWER OF COMMISSION.—As to the contention that the granting of reparation will not constitute a burden upon interstate commerce, there can be no distinction between the power to regulate and the power to grant reparation, but such order may be made only after investigation and determination that an unreasonable, excessive or discriminatory rate has been charged. In the face of prior orders determining that the rates now charged are just and reasonable, and under the pleadings and evidence in the above case, such rates can not now be held unreasonable and excessive.

COMMISSION—JURISDICTION—IN GENERAL—Per Carr, concurring: The Commission is not vested with jurisdiction to enter declaratory judgments adjudicating its prior actions to have been invalid.

Ellinwood and Ross, by *Martin Le Boutillier* and *Leonard B. Slosson*, for Complainant.
Henry W. Coil and *Newman Jones*, for Defendant.

BY THE COMMISSION.

OPINION.

The complainant, Arizona Edison Company, is engaged in the business of selling and distributing electric current in and about the city of Yuma, state of Arizona. The defendant, Southern Sierras Power Company, generates and sells electric current in the State of California. Defendant supplies complainant with current at a point in California at the west side of the Colorado River where the transmission lines of the defendant end and those of the complainant begin.

A pubic hearing was held before Examiner Gannon, at which time the matter was submitted and is now ready for decision.

On March 15, 1917, the Yuma Light, Gas and Water Company, the predecessor of the complainant, and the Coachella Valley Ice and Electric Company, the predecessor of the defendant, entered into a contract for the sale and delivery of electric current at said point near the boundary between the two states, which contract provided for the rates to be charged for such service, and was to continue in effect between the parties thereto and their successors in interest for a period of fifteen years. Hereafter we will refer to the complainant and defendant herein as though they were the original contracting parties.

In September, 1920, this Commission by its Decision No. 8119, in the exercise of its power to regulate the rates of utilities in this state, fixed the rates at which the defendant company should thereafter sell its electric current, including such general power service as that rendered to the complainant company for resale in the state of Arizona, and has subsequently on several occasions modified such order fixing defendant's rates. The complainant now alleges that since such order of this Commission was made, the defendant has charged complainant and the complainant has paid defendant for electric current at the rates fixed by this Commission, which rates were higher than those provided for in the contract of March 15, 1917, and that the orders of this Commission fixing such rates were and now are illegal, void and

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of no effect, for the reason that they impose a direct burden upon interstate commerce. Complainant prays that this Commission issue its order authorizing defendant to charge complainant the rates provided for in the contract of March 15, 1917, and no other rates, and also that defendant be ordered to make reparation of all sums collected from complainant in excess of the rates provided for in such private contract.

Both parties take the position in this proceeding that the Commission exceeded its jurisdiction in regulating the rates to be charged for electric current generated by the defendant in California and sold by it at or near the state line to the complainant for distribution in Arizona. Each cites the recent case of the United States Supreme Court in *Public Utilities Commission of Rhode Island and Narragansett Electric Lighting Company* vs. *Attleboro Steam and Electric Company* (273 U. S. 83; 71 Law Ed. 309; 47 Sup. Ct. 294) as controlling the Commission in this proceeding. The decision in that case was to the effect that the transmission of electric energy from one state to another is interstate commerce, although transferred from vendor to purchaser at the state boundary, and further that a state can not regulate the rate charged by a local electric corporation for current sold to a foreign corporation for use in another state and delivered at the state boundary, although the rates to the local consumers may be affected by the inadequacy of the contract rate under which it is being delivered to the foreign corporation.

The complainant's whole case is premised on the assumption that by the force of the Attleboro decision the previous orders of this Commission in regulating the rates in question are illegal and void. Though the facts surrounding the interstate transmission and sale of power by the complainant to defendant may be similar to those in the Attleboro case we are not prepared to say that the two cases are parallel and we are therefore not justified in concluding that the rates fixed by this Commission covering the sale of electric current by the defendant to the complainant are void and of no force and effect.

Should it be admitted that by the force of the Attleboro decision this Commission must now acknowledge that the rates fixed in its Decision No. 8119 and amendments thereto were illegal such admission would not aid the complainant herein. This Commission is asked to issue its order declaring the rates previously fixed by it to be illegal and void because this Commission had no power to fix such rates and at the same time it is asked to order certain other rates to be reinstated. There is no allegation that the present rates are unjust, unreasonable or discriminatory, nor is there any allegation that the rates mentioned in the private contract of March 15, 1917, are just and reasonable. It does not matter that the other rates were rates agreed upon in a private

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contract between the parties. To declare such rates effective would be just as much a regulation of the rates of defendant, and just as much an imposition of a burden on interstate commerce as would have been the fixing of rates in our earlier order.

Complainant in its briefs filed does not satisfactorily explain such inconsistency. The prayer is that the Commission order the defendant to charge certain rates and no other, whereas its brief states that it asks the Commission merely to remove a burden or direct interference which it itself has placed on interstate commerce. If we accept the contention of complainant that the previous orders fixing such interstate rates were void and have no force and effect there is now no burden or interference to be removed and any order of this Commission to that effect would be a mere idle act. Though there may exist a private contract between complainant and defendant providing for the rates to be charged for the sale of electric current this Commission has no more power to interpret or pass upon the validity of such contract than it has, in its regulatory capacity, to fix the rates. If its jurisdiction fails in one case it fails also in the other. The power of this body to determine rights under private contract is incident only to its general power to regulate.

Our opinion thus far has answered complainant's petition that an order be made determining the proper rate at which defendant should in the future bill the complainant for electric current. Complainant, however, also seeks an order requiring defendant to make reparation to the extent that the rates charged for current already used have exceeded those provided for in the private contract. The contention is that the granting of such reparation will not constitute a direct burden or interference with interstate commerce. The reasoning is not quite clear. It is true that there may be a distinction between the power to regulate and the power to grant reparation, but the dedication of authority to this Commission to grant reparation in cases where an unreasonable, excessive or discriminatory rate has been charged requires that such order be made only after investigation by this body and determination of that fact. Obviously, we can not in the face of the previous orders of this Commission determining that the rates now charged are just and reasonable and under the pleadings and evidence before us in the instant case now hold such rates to be unreasonable and excessive. Indeed, the complaint does not allege this to be the case.

Accordingly there is no necessity of discussing the other issues raised by the pleadings involving the interpretation of the private contracts between the parties and the amounts claimed to have been overpaid.

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ORDER.

Complaint having been filed herein as above entitled, hearing having been had, briefs having been filed, and the matter duly submitted and now being ready for decision, and it appearing that the complaint should be dismissed;

It is hereby ordered, that the above entitled complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this twentieth day of April, 1928.

LEON O. WHITSELL,
C. L. SEAVEY,
EZRA W. DECOTO,
THOS. S. LOUTTIT,
Commissioners.

I concur in the foregoing order. If the transaction here falls within the doctrine laid down in the Attleboro case cited in the opinion, as I think it does, then the action of the Commission subsequent to the date of the contract was without effect as a burden on interstate commerce. As to adjudicating its action to have been invalid, it is not my understanding that the Railroad Commission is vested with jurisdiction to enter declaratory judgments in such a case. On the other hand, if the transaction is not within the doctrine of the Attleboro case, neither the issues presented nor the evidence furnish any justification for modifying rates established by the Commission, and the claim for reparation is met by the plain language of section 71*a* of the Public Utilities Act.

W. J. CARR, *Commissioner.*

DECISION No. 19643.

IN THE MATTER OF THE APPLICATION OF ONTARIO FEED AND MILLING COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING (1) THE ISSUE OF THEIR CAPITAL STOCK; (2) A MORTGAGE NOTE.

Application No. 14479.

Decided April 20, 1928.

SECURITY ISSUES.—Ontario Feed and Milling Company authorized to issue $90,800 of common stock in exchange for stock issued without authorization, and to assume balance due ($14,900.16) on note and mortgage.

SECURITY ISSUES—NECESSITY OF APPROVAL.—Although revenue obtained from storage is nominal, a corporation engaged in a public utility business must obtain permission to issue securities.

Leonard P. Fowler, for Applicant.

BY THE COMMISSION.

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OPINION.

The Ontario Feed and Milling Company asks permission to issue $200,000 of common stock and assume an indebtedness of $14,900.16.

Applicant was organized on or about December 23, 1925, with an authorized capital stock of $200,000, divided into 2000 shares of the par value of $100 each. It is engaged in the business of buying and selling, both wholesale and retail, hay, feed, grain and supplies in the city of Ontario. It is also engaged in the business of warehousing, operating under the name of the Ontario Grain and Warehouse Company, in the same location.

The corporation and its predecessor, the copartnership referred to herein, have been filing annual reports with the Railroad Commission and for the last three years have been reporting revenues and expenses as follows:

Item	*1925*	*1926*	*1927*
Merchandise sales	$429,880 22	$478,140 70	$543,533 56
Storage revenue	1,279 11	512 79	350 78
Miscellaneous	236 59	75 97	954 12
Total revenue	$431,395 92	$478,729 46	$544,838 46
Less operating expenses	423,897 09	467,471 76	534,643 10
Net operating revenue	$7,498 83	$11,257 70	$10,195 36

It will be observed that the revenue received from storage is nominal in amount, as compared with the revenue from merchandise sales. We believe, however, that even though such storage revenue is nominal, the corporation is engaged in a public utility business and must obtain permission from this Commission to issue stock and notes such as are referred to herein.

It appears that the copartnership, Ontario Feed and Fuel Company, in 1922, executed a mortgage to secure the payment of an indebtedness of $27,500, such indebtedness being payable in monthly installments of $165. The monthly payments include payment on the principal and interest at the rate of 7½ per cent per annum. The loan was obtained from the Peoples Mutual Building and Loan Association and is secured by a mortgage on a parcel of land described as the west three hundred twenty-five feet, block F, South Side Tract, located on the northeast corner of Plum avenue and Main street in the city of Ontario. There is situated on this property a concrete warehouse building consisting of a basement and main floor two hundred twenty feet by sixty feet.

The testimony shows that the Ontario Feed and Milling Company has issued $90,800 of stock under a permit obtained from the Commissioner of Corporations. Of the stock so issued, $75,000 was issued in exchange for properties and the remainder sold for cash. The testimony further shows that the applicant may not issue any additional

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stock. The record does not warrant us to make a finding that the money, property or labor to be procured or paid for through the issue of $200,000 of stock is reasonably required by applicant. The order will permit the issue of $90,800 of stock.

ORDER.

Ontario Feed and Milling Company having asked permission to issue $200,000 of its common capital stock and assume an indebtedness of $14,900.16, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured and paid for by the issue of $90,800 of stock is reasonably required by applicant and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income and that this application, in so far as it involves the issue of $109,200 of stock, be denied without prejudice; therefore,

It is hereby ordered, as follows:

1. Ontario Feed and Milling Company may issue, on or before July 1, 1928, $90,800 of its common stock in exchange for the stock heretofore issued without a permit from the Railroad Commission.

2. Ontario Feed and Milling Company may assume the balance due ($14,900.16) on the note and mortgage executed in July, 1922, by the Ontario Feed and Fuel Company and referred to in this application.

3. This application, in so far as it involves the issue of $109,200 of common stock, is hereby denied without prejudice.

4. Ontario Feed and Milling Company shall file with the Railroad Commission a report showing the amount of stock issued under the authority herein granted and the names of persons to whom such stock was issued, said report to be filed within thirty days after the issue of the stock.

5. The authority herein granted will become effective ten days after the date hereof.

Dated at San Francisco, California, this twentieth day of April, 1928.

DECISION No. 19644.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR AUTHORITY TO ACQUIRE THE PROPERTIES AND FRANCHISES OF ONTARIO POWER COMPANY, AND OF ONTARIO POWER COMPANY TO SELL ITS PROPERTIES AND FRANCHISES TO SOUTHERN CALIFORNIA EDISON COMPANY.

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Application No. 14534.
Decided April 20, 1928.

TRANSFER.—Southern California Edison Company authorized to purchase properties of Ontario Power Company for $1,100,000, and to assume outstanding indebtedness of $677,904.01.

ACCOUNTING—ACCOUNTS TO WHICH PARTICULAR ITEMS CHARGEABLE.—Purchase price in excess of the cost of physical properties, organization expense and current assets of a vendee utility should be charged to miscellaneous debits to profit and loss.

Gail C. Larkin, for Applicants.

BY THE COMMISSION.

OPINION.

Ontario Power Company asks permission to sell all of its properties and franchises to Southern California Edison Company, which company in turn asks permission to purchase said properties. A detailed description of the property to be sold by Ontario Power Company is set forth in the proposed deed attached to the petition and marked Exhibit "D."

It is of record that by virtue of Decision No. 19044, dated November 14, 1927, and Decision No. 19261, dated January 18, 1928, the Southern California Edison Company now owns more than two-thirds of the issued and outstanding stock of the Ontario Power Company. It has acquired, according to the record, all of the outstanding common stock of the Ontario Power Company ($500,000) and all but $70,800 par value of that company's outstanding $475,000 of 7 per cent preferred stock. It has offered to issue its 7 per cent preferred stock in exchange for the 7 per cent preferred stock of the Ontario Power Company.

The Southern California Edison Company now desires to purchase from Ontario Power Company all its business, properties and franchises as a whole in consideration of the assumption by the Southern California Edison Company of all of the debts and liabilities of the Ontario Power Company, amounting to $677,904.01 on January 31, 1928, and the payment on or before July 1, 1955, of the sum of $1,100,000 with interest thereon at the rate of 4 per cent per annum payable quarterly. In the event that the Southern California Edison Company acquires all of the outstanding stock of the Ontario Power Company, the payment of the $1,100,000 will revert to the treasury of the Southern California Edison Company upon the liquidation of the Ontario Power Company.

The bonded debt of the Ontario Power Company, the payment of which will be assumed by the Southern California Edison Company, consists of $231,000 of 5 per cent first mortgage bonds due January 2, 1932, the payment of which is secured by a deed of trust or mortgage executed on January 2, 1902, by the Ontario Power Company to the

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Union Trust Company of San Francisco, California, as trustee, and $250,000 of 6 per cent and $150,000 of 5½ per cent general and refunding mortgage bonds due July 1, 1955, and issued under a mortgage or deed of trust executed July 1, 1925, to the California Trust Company, as trustee.

As of January 31, 1928, the Ontario Power Company reports assets and liabilities as follows:

Assets.

Intangible capital:		
Organization		$7,230 51
Tangible fixed capital:		
Water rights		263,000 00
Production capital		323,162 43
Hydraulic power plant land	$3,334 80	
Hydraulic power plant structures	41,340 70	
Dams, waterways, etc.	178,293 16	
Hydraulic power plant equipment	100,193 77	
Distribution capital		1,111,892 50
Distribution land	$2,904 59	
Distribution structures	26,282 03	
Distribution equipment	55,639 83	
Overhead and underground conduits	684,594 11	
Transformers	246,802 00	
Meters	95,669 94	
General capital		265,469 06
General office land	$6,082 75	
General office structures	41,571 04	
Office furniture and fixtures	18,436 94	
General equipment	16,226 25	
Transportation equipment	26,463 70	
Cash and deposits	46,581 38	
Accounts and notes receivable	55,124 58	
Materials and supplies	29,308 74	
Special sinking funds	7,921 29	
Deferred debits	17,752 39	
Total assets		$1,970,754 50

Liabilities.

Capital stock—Common	$500,000 00
Capital stock—Preferred	475,000 00
Bonds	631,000 00
Accounts payable	7,225 00
Consumers' desposits	3,421 73
Taxes accrued	33,359 83
Interest accrued	2,897 45
Deferred credits	937 89
Depreciation reserve	260,695 54
Extraordinary repair reserve	3,149 09
Unappropriated surplus January 1, 1928	47,677 34
Profit	5,390 63
Total liabilities	$1,970,754 50

Southern California Edison Company paid $625,000 for the $500,000 of common stock of Ontario Power Company and is ready and willing to exchange its 7 per cent preferred stock for the $475,000 of outstand-

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ing Ontario Power Company 7 per cent preferred stock. It has also agreed to assume the indebtedness of Ontario Power Company which, as of January 31, 1928, is reported at $677,904.01. The total consideration thus paid or which will eventually be paid for the Ontario Power Company properties is $1,777,904.01. This purchase price is $70,149.31 in excess of the cost of the physical properties, organization expense and current assets of the Ontario Power Company. We believe that the $70,149.31 should be charged to Account 508—Miscellaneous debits to profit and loss. It does not follow from this conclusion that we will permit the Southern California Edison Company to capitalize through the issue of stock, bonds or notes all of the $625,000 paid for the common stock of the Ontario Power Company. That company has a depreciation reserve of $260,695.54 which has been invested in its properties. The amount in the reserve should be considered in connection with any request to capitalize the $625,000, a matter which is not now before the Commission.

ORDER.

Application having been made to the Railroad Commission by the Ontario Power Company to sell its properties, described in Exhibit "D" attached to the petition in this proceeding, to the Southern California Edison Company, which company asks permission to purchase and acquire said properties, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the transfer of the properties is in the public interest provided such transfer is made in accordance with the terms and provisions of this order; therefore,

It is hereby ordered, that the Ontario Power Company be and it hereby is authorized to sell and convey on or before July 31, 1928, to the Southern California Edison Company, and Southern California Edison Company be and it hereby is authorized to purchase and acquire the properties of Ontario Power Company, described in Exhibit "D" attached to the petition in this proceeding; said Southern California Edison Company may pay for said properties of Ontario Power Company not exceeding $1,100,000 on or before July 1, 1955, with interest at the rate of 4 per cent per annum, payable quarterly, and shall assume the payment of all the indebtedness of Ontario Power Company including the outstanding bonds issued under the mortgage or deed of trust dated January 2, 1902, from Ontario Power Company to the Union Trust Company of San Francisco, as trustee, and the bonds issued under the mortgage or deed of trust dated July 1, 1925, from Ontario Power Company to California Trust Company, as trustee.

It is hereby further ordered, that the Southern California Edison Company shall charge to Account 508—Miscellaneous debits to profit

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and loss—$70,149.31 of the price which it has agreed to pay for the properties of Ontario Power Company.

It is hereby further ordered, that the Southern California Edison Company shall, within sixty days after acquiring the ownership and possession of the properties of Ontario Power Company, file with the Commission a certified copy of the deed or other instrument of conveyance by which it acquires title to said properties and also a copy of each and every bookkeeping entry entered on its books to record the aforesaid transaction and the distribution of the purchase price to primary accounts.

It is hereby further ordered, that the Ontario Power Company shall file with the Commission a report, on the regular annual report forms prescribed by this Commission, covering the period from January 1, 1928, down to the date on which it ceases its public utility operations, said report to be filed sixty days after the transfer of the aforesaid properties.

It is hereby further ordered, that the authority herein granted to transfer properties shall become effective upon the written acceptance of such authority by the Southern California Edison Company and the payment of the fee prescribed by section 57 of the Public Utilities Act.

Dated at San Francisco, California, this twentieth day of April, 1928.

DECISION No. 19645.

IN THE MATTER OF THE APPLICATION OF SAN JOSE WATER WORKS, A CORPORATION, FOR AN ORDER AUTHORIZING APPLICANT TO ISSUE AND SELL FIVE HUNDRED THOUSAND DOLLARS IN PRINCIPAL AMOUNT OF ITS FIRST MORTGAGE FIVE PER CENT GOLD BONDS, TO BE DATED JANUARY 1, 1928, AND TO MATURE JANUARY 1, 1953.

Application No. 14559.

Decided April 20, 1928.

SECURITY ISSUES—BONDS.—San Jose Water Works authorized to issue and sell at not less than 100.715 and accrued interest, $500,000 of its first mortgage 5 per cent gold bonds due January 1, 1953.

R. C. Leib and *McCutchen, Olney, Mannon and Greene*, by *J. D. Adams*, for Applicant.

BY THE COMMISSION.

OPINION.

In this application San Jose Water Works, a corporation, asks permission to issue and sell $500,000 of first mortgage 5 per cent bonds, dated January 1, 1928, and due January 1, 1953, for the purpose of paying outstanding notes and of reimbursing its treasury for moneys expended for additions, betterments and extensions.

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The company reports, as of February 29, 1928, outstanding common capital stock of $3,000,000; first mortgage 5 per cent bonds due July 1, 1951, of $500,000, and short term 6 per cent notes of $400,000. The bonds now outstanding were issued under authority granted by Decision No. 16954, dated June 17, 1926, for the purpose of paying short term notes then outstanding which had been issued to finance the cost of extensions, additions and betterments made prior to December 31, 1925. The notes now outstanding were issued to meet construction expenditures since that date.

It is alleged, in the present proceeding, that between January 1, 1926, and January 1, 1928, applicant has expended for the acquisition of property and the construction, completion, extension and improvement of its facilities the sum of $697,962.46, as shown in detail in Exhibit No. 1, of which $400,000 was provided through the issue of the short term notes now outstanding and the balance from income or other moneys in its treasury not secured by or obtained from the issue of stock, bonds or notes or other evidences of indebtedness. In now selling the additional $500,000 of bonds the company reports that it has made arrangements to dispose of them for 100.715 per cent of their face value and accrued interest and that it proposes to use $400,000 to pay the outstanding notes and the remainder to reimburse its treasury. The moneys used to reimburse the treasury will thereafter be expended to pay the cost of new construction.

ORDER.

San Jose Water Works having applied to the Railroad Commission for permission to issue and sell $500,000 of bonds, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through such issue is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that San Jose Water Works be and it hereby is authorized to issue and sell, at not less than 100.715 per cent of their face value and accrued interest, $500,000 of its first mortgage 5 per cent gold bonds, due January 1, 1953, and to use not exceeding $400,000 of the proceeds to pay the $400,000 short term notes now outstanding, and to use the remaining proceeds to reimburse its treasury, provided that any moneys used to reimburse applicant's treasury shall thereafter be used to pay the cost of new construction.

The authority herein granted is subject to the following conditions:

1. Applicant shall keep such record of the issue and sale of the bonds herein authorized and of the disposition of the proceeds as will enable

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it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

2. The authority herein granted shall become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $100.

Dated at San Francisco, California, this twentieth day of April, 1928.

DECISION No. 19647.

IN THE MATTER OF THE INVESTIGATION UPON THE COMMISSION'S OWN MOTION INTO THE REASONABLENESS OF CERTAIN RATES OF NORTHERN CALIFORNIA TELEPHONE COMPANY AS SET FORTH IN CERTAIN TARIFFS DESIGNATED "C. R. C. SHEETS NOS. 488-T TO 973-T," INCLUSIVE.

Case No. 2504.

Decided April 21, 1928.

RATES—TELEPHONE UTILITY.—Northern California Telephone Company authorized to place in effect schedule of extension charges and interexchange rates.

SERVICE—EXTENSIONS—IN GENERAL.—The Commission is unwilling to authorize a rule providing for a charge to an applicant for telephone service outside of a primary rate area if it is necessary to extend a circuit more than one thousand feet in order to provide service.

J. G. Marshall, for Northern California Telephone Company.
L. S. Wing, for California Farm Bureau Federation.

BY THE COMMISSION.

OPINION.

In this proceeding the Railroad Commission on its own motion has instituted an investigation into the reasonableness of the filing of and making effective certain tariffs of the Northern California Telephone Company, particularly designated sheets C. R. C. Nos 488–T to 973–T, inclusive. These rate schedules appertain to the refiling of certain exchange rates, rules and regulations now effective, the filing of a small number of rates, rules and regulations proposed to be modified and an entire new schedule of interexchange rates constructed on the plan generally used throughout California but quite different from those now effective in portions of the territory of this utility.

A review of these offered filings indicated that while their introduction as requested would result in an over-all decrease in charges to customers, yet in a few instances certain rates would result in increases and it was necessary that an opportunity should be given so that a showing might be made before the Commission and a finding that such increases were justified.

A public hearing in the case was held by Examiner Rowell in San Francisco on March 8, 1928, at which place and time the matter was submitted for decision.

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Northern California Telephone Company operates the consolidated telephone systems of the former Sacramento Valley Telephone Company and of the California Telephone and Light Company, both in northern California. The tariffs under consideration in this proceeding are those for service over the former California Telephone and Light Company properties only.

The company in revised sheet C. R. C. No. 615–T has proposed a rule and regulation No. 31–A which appertains to line extension charges in the territory formerly served by the California Telephone and Light Company. Section B of this rule and regulation is as follows:

> B. *Line Extension Outside Primary Rate Area.*
>
> A line extension necessary to render telephone service outside of the primary rate area will be made in accordance with the following:
>
> 1. The company will make extensions to existing plant for each primary station up to and including 500 feet as measured along the route of the extension (excluding drop wire), or will add to existing plant a circuit up to and including 1000 feet in length.
>
> 2. The company will make extensions requiring more than 500 feet of plant, or 1000 feet of circuit to existing plant, upon the payment of a line extension charge of $3 for each 100 feet, or fraction thereof, of plant, and $1.50 for each 100 feet, or fraction thereof, of circuit added to existing plant in excess of that referred to under 1.
>
> Distances referred to in the above rule will be measured from the primary rate area boundary at the point where the line extension crosses that boundary.

This rule would permit the utility to make a charge to an applicant for service if it was necessary to extend a circuit more than 1000 feet in order to provide service. No telephone utility in California has now in effect a line extension rule which provides for a charge under similar conditions and we are unwilling to authorize this part of the proposed rule. Proposed rule and regulation No. 31–A also provides for a charge for an extension of plant requiring more than 500 feet from existing plant at the rate of $3 per 100 feet or fraction thereof. We believe that this provision should be modified to more nearly conform to the practice of other companies in this state which render telephone service under similar conditions. The order following this opinion will provide for a more suitable rule and regulation No. 31–A.

Mr. L. S. Wing for the California Farm Bureau made formal objection to the statement in condition No. 1 in the farmer line rate schedule and which also appears in rule and regulation No. 21, to wit, "A farmer line shall not extend across an exchange boundary," and stated that a case had been filed against the Northern California Telephone Company on account of the effect of exchange boundaries on farmer line service. It appears that the practice of this utility as to this matter should be uniform over its entire territory and whereas a decision in the above mentioned complaint, designated Case No. 2511, should properly dispose of this matter, this farmer line rate schedule and rule and regulation No. 21, as proposed, will be permitted to be filed. It should be understood that we are not making a finding as to

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the reasonableness of the above mentioned condition No. 1 and rule and regulation No. 21 at this time.

This filing includes tariffs for interexchange service over this utility's system constructed on the same plan of similar rates for similar service generally effective throughout California. The system of interexchange rates which was inherited from the California Telephone and Light Company was discriminatory and difficult of application. It appears that the interested public will be considerably benefited by the making effective of these new interexchange rates as proposed.

ORDER.

The Railroad Commission of the State of California having instituted an investigation into the reasonableness of the filing by Northern California Telephone Company of certain tariffs, particularly designated sheets C. R. C. Nos. 488–T to 973–T, inclusive, a public hearing having been held, the matter having been submitted and being now ready for decision:

The Railroad Commission of the State of California hereby finds as a fact that the above designated sheets C. R. C. Nos. 488–T to 614–T, inclusive, and Nos. 616–T to 973–T, inclusive, should be filed and that sheet C. R. C. No. 615–T should be modified, for the reasons set forth in the opinion which precedes this order.

Basing its order on the foregoing finding of fact and such other findings of fact as are set forth in the opinion preceding this order;

It is hereby ordered, that Northern California Telephone Company be and it is hereby authorized to file with the Railroad Commission on or before May 15, 1928, the tariffs particularly designated sheets C. R. C. Nos. 488–T to 614–T, inclusive, and Nos. 616–T to 973–T, inclusive, effective on the twenty-first day of the month next following the date hereof.

It is hereby further ordered, that Northern California Telephone Company be and it is hereby authorized to file with the Railroad Commission on or before May 15, 1928, a rule and regulation No. 31–A as set forth in "Exhibit A" attached hereto and made a part of this order, effective on the twenty-first day of the month next following the date hereof.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-first day of April, 1928.

LEON O. WHITSELL,
C. L. SEAVEY,
THOS. S. LOUTTIT,
Commissioners.

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I concur in the order authorizing the company to put into effect its proposed new rate schedule because the proposed schedule is, on the whole, advantageous to subscribers and will effect a substantial decrease in the amount they will pay for service.

I am not, however, entirely satisfied with the rules respecting line extensions. While these are in harmony with those employed generally by telephone utilities and are probably unobjectionable so far as the amount of charges is concerned, they will in time result in a situation which will be unsound. Unlike the extension rules of gas, water and electric utilities, payments on account of extensions are not refundable. I presume the claimed justification for this is that the amounts involved are small and that payments cover only a relatively small part of the cost of the extension and that in reality the purpose of this charge is to protect the company in its operating and maintenance expense until the extension gets on a profitable basis. It seems to me that the rule should either be so shaped that the company waives the right to claim the amount received by it on account of extensions as a part of its rate base, or, perhaps better still, that payments on account of extensions be treated as operating revenue. However, the way in which extensions should be handled may, I think, best be determined in some other form of proceeding rather than to attempt here to correct a situation which at most is a merely incidental feature of the order being made. The present order should not be deemed a commitment to the rule here sanctioned merely as part of a general schedule.

W. J. CARR, *Commissioner.*

EXHIBIT "A."

RULE AND REGULATION No. 31-A—LINE EXTENSION

Applicable within the Calistoga, Guerneville, Healdsburg, Lakeport, Middletown, Potter Valley and Sonoma exchanges, and suburban areas of the Santa Rosa and Sebastopol exchanges.

A. *Line extension within primary rate area.*
Line extensions necessary to render telephone service within the primary rate area will be made by the company.

B. *Line extension outside primary rate area.*
A line extension, necessary to render telephone service outside the primary rate area will be made in accordance with the following:
1. The company will make extensions to existing plant for each primary station up to and including 300 feet, as measured along the route of the extension (excluding drop wire).
2. The company will make extensions to a distance greater than 300 feet from existing plant upon the payment of a line extension charge of $3 for each 100 feet (or fraction thereof) in excess of the 300 feet for each primary station.

C. *Ownership and maintenance of line.*
All line extensions will be owned and maintained by the company. The applicant, however, if he so elects, may furnish and set the required poles in accordance with the construction standards of the company in lieu of the charges applicable under section B, but in all such instances the ownership shall be vested in the telephone company.

D. *Temporary or speculative service.*
Line extensions for service to an applicant engaged in temporary or speculative business will be made, providing the applicant pays to the company the total cost to construct and remove the line necessary to render that service, less the salvage value of the materials used.

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E. *Location of line extensions.*
The location of line extensions shall be determined by the telephone company.

F. *Contracts.*
Contracts for telephone service where line extensions are necessary may be required by the company as a condition precedent to service for a period not to exceed three years.

G. *Return of line extension charge.*
The line extension charge is not refundable.

H. *Saving clause.*
In any case which may appear to warrant a departure from the above rules either on behalf of the company or applicant for service, the matter may be submitted to the Railroad Commission of the State of California for adjustment.

DECISION No. 19648.

GEO. H. CROLEY, INCORPORATED, A CORPORATION,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A CORPORATION.

Case No. 2474.

Decided April 21, 1928.

DISCRIMINATION.—The Atchison Topeka and Santa Fe Railway Company directed to remove discrimination in out-of-line charge on grain milled in transit at San Francisco.

REPARATION—CIRCUMSTANCES DETERMINING RIGHT—DISCRIMINATION.—Reparation in a proceeding involving undue prejudice and disadvantage will be denied where damage is not shown to have been sustained (*Penn. R. Co.* vs. *International Coal Co.*, 230 U. S. 184; *L. A. County* vs. *Pacific Electric Rwy.*, 27 C. R. C. 337, 28 C. R. C. 143; *Turner* vs. *Pacific Electric Rwy. Co.*, 27 C. R. C. 404; *Vernon O. R. Co.* vs. *Pacific Electric Rwy. Co.*, 27 C. R. C. 442; *Coal Switching Cases*, 36 I. C. C. 226).

C. R. Schulz and *Max B. Schulz*, by *C. R. Schulz*, for Complainant.
Platt Kent, E. C. Pierre and *Berne Levy*, for Defendant.
R. P. McCarthy, for Globe Grain and Milling Company.
E. B. Smith, for Sperry Flour Company.
C. S. Connolly, for Albers Bros. Milling Company.
James E. Lyons, for Southern Pacific Company.

BY THE COMMISSION.

OPINION.

Complainant, a corporation organized under the laws of the State of California, with its principal place of business at San Francisco, is engaged in buying, selling and manufacturing grain and its products. By complaint filed January 25, 1928, it alleges that the out-of-line charge of 2 cents per 100 pounds assessed and collected by defendant on grain, carloads, moving during the period of two years prior to the filing of this complaint from points on defendant's line, milled in transit at San Francisco and the milled products subsequently reshipped to points on the Northwestern Pacific Railroad, is in violation of section 19 of the Public Utilities Act and subjects complainant to undue prejudice and disadvantage and extends undue preference and advantage to its competitors located at Oakland.

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We are asked to require defendant to cease and desist from the alleged violation of the Public Utilities Act and to award reparation. Rates will be stated in cents per 100 pounds.

A public hearing was held at San Francisco March 15, 1928, before Examiner Geary, and the case having been duly heard and submitted is now ready for our opinion and order.

Complainant in conducting its business maintains a mill at San Francisco for the milling, cleaning, storing and otherwise treating in transit of grain and grain products. A portion of the grain used is shipped from points in the San Joaquin Valley to San Francisco where it is transmitted and the finished product reshipped to Petaluma, Santa Rosa and other points on the Northwestern Pacific Railroad. The direct route from the original territory to the final destination points involved herein is over defendant's rails to Point Richmond, car-ferry to Tiburon, thence Northwestern Pacific Railroad beyond. Complainant's shipments moved over defendant's rails to Point Richmond; car-ferry to the defendant's pier at San Francisco; rail haul to complainant's mill and return to Northwestern Pacific Railroad Company's pier, car-ferry to Tiburon; thence Northwestern Pacific Railroad beyond.

Defendant's Circular 2297, C. R. C. No. 412, provides that shipments of grain may be stopped for purpose of milling, cleaning, storing or otherwise treating in transit at stations directly intermediate between point of origin and final destination without additional charges. In the event that the transit station is not directly intermediate, charges for the out-of-line, indirect or back haul services, ranging from 2 cents for distances not exceeding 45 miles to 6 cents for distances over 100 miles and less than 125 miles, are assessed in addition to the line haul rate. On shipments destined to points on the Northwestern Pacific Railroad an out-of-line rate of 2 cents was charged if the grain was transmitted at San Francisco, but no out-of-line rate was charged on similar shipments milled in transit at Oakland as per exception published effective April 10, 1923, in Supplement No. 15 to The Atchison, Topeka and Santa Fe Railway Company's Circular C. R. C. 412, which provided that Oakland would be considered intermediate on carload traffic destined to points on the Northwestern Pacific Railroad Company.

Witness for the defendant stated this exception was published for the reason that the Southern Pacific Company treated Oakland as an intermediate point on traffic moving over its rails from points in the San Joaquin Valley when destined to the territory involved herein, therefore in order to meet the rates of the competing carrier it was required to perform the back haul services from Richmond to Oakland and return to Richmond free or impose a charge for same and thus discourage the movement of grain over its own line.

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The distances from San Joaquin Valley points to Petaluma and Santa Rosa via San Francisco are slightly less than the distances via Oakland; however, on traffic moving to the former point an expensive car-ferry service from Point Richmond to San Francisco of approximately 10 miles is involved, and the cost of this service per mile is in excess of the operating cost per mile for a rail haul. On traffic moving over the Southern Pacific Company's rails from the San Joaquin Valley to the same points on the Northwestern Pacific Railroad that carrier did not make San Francisco an intermediate point, therefore this defendant was not required to perform the out-of-line haul without compensation in order to secure its portion of the traffic.

Witness for the defendant stipulated at the hearing that its Transit Circular C. R. C. No. 412 would be amended making San Francisco an intermediate point and giving it the same privileges as are now enjoyed by Oakland, thereby removing the undue prejudice and disadvantage complained of.

The circumstances and conditions as shown by this record do not warrant a difference in the charges on grain milled in transit at San Francisco from the charges on similar shipments milled in transit at Oakland, and we conclude and find that defendant should publish and maintain the same transit arrangement at San Francisco as is now in effect at Oakland.

Complainant seeks an award of reparation on all shipments moved within the statutory period, apparently upon the theory that having paid a higher freight charge than its Oakland competitor at the destination points it was automatically damaged, but the record fails to furnish testimony of actual competition between the two points. Damage for which reparation can be awarded in a proceeding involving undue prejudice and disadvantage is not shown to have been sustained. (*Pennsylvania Railroad Company* vs. *International Coal Company*, 230 U. S. 184. *Los Angeles County* vs. *Pacific Electric Railway*, 27 C. R. C. 337 and 28 C. R. C. 143. *Turner* vs. *Pacific Electric Railway Company*, 27 C. R. C. 404, and *Vernon Oil Refining Company* vs. *Pacific Electric Railway Company*, 27 C. R. C. 442. *Coal Switching Reparation Cases at Chicago*, 36 I. C. C. 226.)

ORDER.

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and basing this order on the findings of fact and conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof; it having been found in said opinion that the charges assailed, which were collected by defendant for back haul or out-of-line services to and from San Francisco in connection with the transportation of

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grain, in carloads, milled in transit at San Francisco and reshipped to points on the Northwestern Pacific Railroad, are unduly prejudicial to San Francisco and unduly preferential to Oakland to the extent that they exceed charges for back haul or out-of-line services contemporaneously maintained by defendant on like traffic milled at Oakland;

It is hereby ordered, that defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby notified and required to cease and desist on or before forty-five days from the date of this order, and thereafter to abstain from practicing the undue preference referred to in the next preceding paragraph hereof.

It is hereby further ordered, that said defendant be and it is hereby notified and required to establish on or before forty-five days from the date of this order, upon notice to this Commission and the general public by not less than five days' filing and posting in the manner required by law, and thereafter to maintain and apply rates, charges, regulations and practices which will prevent and avoid the aforesaid undue prejudice and preference.

It is hereby further ordered, that as to all other matters the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this twenty-first day of April, 1928.

DECISION No. 19651.

IN THE MATTER OF THE APPLICATION OF E. L. McCONNEL FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND PRESENT MOTOR FREIGHT SERVICE TO INCLUDE BETWEEN SAN LUIS OBISPO NORTH TO GILROY, SOUTH TO SANTA BARBARA, EAST TO FRESNO, AND BAKERSFIELD TERRITORY TRIBUTARY THERETO, PLACES INTERMEDIATE THERE BETWEEN AND FROM HIGHWAY ROUTES SOUGHT, PLACES TEN MILES INTERIOR THEREFROM; ALSO FOR DEFINEMENT AND VALIDATION OF MOTOR FREIGHT OPERATIONS NOW BEING EXERCISED BY APPLICANT.

Application No. 12258.

Decided April 21, 1928.

CERTIFICATE—AUTO TRUCK.—E. L. McConnel (Valley and Coast Transit Co.) authorized to extend present motor freight service.

AUTOMOTIVE TRANSPORTATION—WHAT CONSTITUTES—RADIAL SERVICE.—Radial automotive service is not within the jurisdiction of the Commission (*Ben Moore*, 27 C. R. C. 388).

AUTOMOTIVE TRANSPORTATION—JURISDICTON OF COMMISSION—PRIVATE ROAD.—Automotive operations over a private road are not subject to the jurisdiction of the Commission (*Bolton* vs. *Olson*, 23 C. R. C. 968).

AUTOMOTIVE TRANSPORTATION—DEMAND SERVICE.—The consolidation of "on demand" service with scheduled operations will not be permitted until applicant is prepared to establish such service upon a regular business, in which event further authority should be sought from the Commission (*R. M. Tolston*, 26 C. R. C. 68).

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CERTIFICATES—GROUNDS FOR REFUSING—IN GENERAL.—An application to operate automotive service will be denied where the highways over which operations are proposed have not been completed and accepted by the proper public authorities.

Harry N. Blair, for Applicant.
L. N. Bradshaw, for Southern Pacific Company.
Edward Stern, for American Railway Express Company.
E. I. Clarke, for Pacific Coast Railway.

BY THE COMMISSION.

OPINION.

In this proceeding, E. L. McConnel, doing business under the fictitious name of Valley and Coast Transit Company, seeks a certificate of public convenience and necessity, authorizing the consolidation, both within themselves and with the extensions sought, of his present operative rights for the transportation of property, extending from San Luis Obispo northerly over the coast highway to San Miguel, from San Luis Obispo southerly over the coast highway to Orcutt via Santa Maria, and from San Luis Obispo northwesterly to San Simeon via Morro, Cayucos and Cambria; authorizing an extension from San Miguel northerly over the coast highway to Watsonville via Bradley, San Ardo, San Lucas, King City, Soledad, Gonzales and Salinas; authorizing an extension southerly from Orcutt over the coast highway to (but not including) Santa Barbara; authorizing branch lines leaving the coast highway at various points between San Miguel and Las Cruces, inclusive; and permitting the establishment of lines across the Coast Range over routes connecting with the coast highway at Paso Robles, Santa Margarita and Santa Maria, serving points in the San Joaquin Valley extending from Fresno on the north to Bakersfield on the south, including a network of highways in the valley serving intermediate points.

Public hearings were held before Examiner Austin at San Luis Obispo when evidence was offered, the matter submitted and it is now ready for decision.

Applicant's existing operative rights for the transportation of property are thus described:

1. Between San Luis Obispo and San Miguel and intermediate points, granted by Decision No. 5469, dated June 6, 1918; Decision No. 5621, dated July 26, 1918, on Application No. 3807, and by Decision No. 7070, dated February 5, 1920, on Application No. 4588.

2. Between San Luis Obispo and Orcutt and intermediate points, granted by Decision No. 7535, dated May 3, 1920, on Application No. 4644.

3. Between San Luis Obispo and San Simeon and intermediate points, granted by Decision No. 11354, dated December 13, 1922, on Application No. 8487; Decision No. 13000, dated January 9, 1924, on

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Application No. 9571, and Decision No. 14347, dated December 9, 1924, on Application No. 10636.

Since the application was filed, the Commission by Decision No. 16782, on Case No. 1812, and consolidated matters, dated May 28, 1926, granted to E. L. McConnel, applicant herein, an operative right for the transportation of passengers, freight and express between San Luis Obispo and San Simeon, serving the intermediate points of Morro, Cayucos and Cambria and intermediate points, subject to the limitation that packages transported between San Luis Obispo and Morro should not exceed fifty pounds each; in addition certain contests between various operators in this territory were disposed of, thus obviating the consideration of many matters referred to in the present application.

Applicant proposes to extend the scheduled service now conducted upon his existing lines over the following branch lines:

1. Between Ontario (near San Luis Obispo) and Avila.
2. From Arroyo Grande to Los Berros, returning to the coast highway at Nipomo.
3. From Los Osos-Morro Junction to Morro and Bayview, returning to the coast highway at Morro.
4. From Pismo to Grover and Oceano, returning to the coast highway at Arroyo Grande.
5. From Santa Maria to Betteravia and Guadalupe, returning to the coast highway at Nipomo.
6. Between Harris and Lompoc.

Applicant also proposes to establish an "on call" service available within forty-eight hours after request by shippers, over the coast highway extending northerly from San Miguel to Watsonville, southerly over the coast highway from Orcutt to (but not including) Santa Barbara, and also over the following branch lines diverging from the coast highway:

(In all instances applicant seeks to serve intermediate points)

Points between which service is proposed		*Length of branch line*
From	*To*	*—miles*
1. Bradley	Branch Ranch (Nacimiento District)	11
2. San Miguel	Branch Ranch (Nacimiento District)	13
3. San Marcos	Adalado (San Marcos Creek Junction)	15½
4. Paso Robles	Cayucos	28
5. Paso Robles	Branch Ranch (Nacimiento District)	33
6. Paso Robles (via Klau)	Cienego Creek crossing	23½
7. Templeton	Cayucos (via Santa Rita Creek)	17
8. Atascadero	Morro	21
9. San Luis Obispo	Pecho Creek (This route was withdrawn when the evidence indicated that it would traverse a private road.)	13½

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Points between which service is proposed		*Length of branch line*
From	*To*	*—miles*
10. San Luis Obispo	Arroyo Grande	15½
11. San Simeon (via Edna)	Arroyo Honda	29
12. Pismo	Edna	5½
13. Arroyo Grande	Musick	14½
14. Arroyo Grande (Huasna Valley)	Adams Ranch	19½
15. Nipomo	Guadalupe	6
16. Santa Maria (via Betteravia)	Guadalupe	14
17. Santa Maria (via Sisquoc) (This route will connect with the main state highway at Sisquoc, thus forming a loop extending to the east of the coast highway.)	Zaca	34
18. Harris	Lompoc	11
19. Los Alamos (via Alisos Canyon)	Sisquoc	11½
20. Zaca (via Los Olivos, Ballard, Santa Ynez and Solvang)	Buellton	13
21. Buellton (via Santa Rita and La Purisima Mission)	Lompoc	19
22. Las Cruces (via Yridiais Creek and Los Amoles Creek)	Lompoc	22

In addition applicant proposes to establish an "on call" service between points on its coast line and points in the San Joaquin Valley which will be available in some instances within 48 hours after request by shippers, and in others within 73 hours after such request. In the following tabulation we have indicated by the symbol "A" the proposed 48-hour service, and by the symbol "B" the proposed 72-hour service. The points between such service is sought as thus described:

Points between which service is proposed		*Length of branch line*
From	*To*	*—miles*
1. (A) San Miguel	Parkfield	23
2. (A) San Miguel	Stone Canyon	25½
3. (A) San Miguel (via Estrella, on the Shandon-Cholame road)	Fifteen Mile Bridge	16
4. (A) Paso Robles (via Estrella and Hog Canyon)	Parkfield	32
5. (A) Paso Robles (via Shandon)	Cholame	27
6. (A) Paso Robles	Creston	15
7. (A) Santa Margarita	Shandon	26
8. (A) Santa Margarita (via Creston and Huero Huero)	Shandon	43
9. (A) Santa Margarita (via San Juan over Simmler-Shandon cutoff)	Shandon	64
10. (A) Santa Margarita (via La Panza)	Simmler	47½
11. (A) Santa Maria (via Maricopa over the Cuyama River route through Santa Barbara National Forest, this road being under construction)	Bakersfield	116
12. (B) Parkfield (via Coalinga, Oil City, Lemoore, Armona, Hanford and Goshen. This is the main route across the valley via Parkfield, the most northerly pass through the mountains. The following seven routes are branch lines.)	Visalia	100
13. (B) Oil City (via Mendota)	Fresno	74
14. (B) Oil City (via Helm)	Fresno	52
15. (B) Lemoore (via Carruthers)	Fresno	30
16. (B) Hanford (via Layton and Fowler)	Fresno	34

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Points between which service is proposed			*Length of branch line*
From		*To*	*—miles*
17. (B) Goshen		Fresno	35
(via Travers, Kingsburg, Selma and Fowler)			
18. (B) Visalia		Fresno	55
(via Dinuba, Reedley and Sanger)			
19. (B) Coalinga		Lemoore	42
(via Stratford, this being an alternate route to route No. 12)			
20. (B) Cholame		Visalia	84
(via Cottonwood, Stratford, Guernsey and Tulare. This also is a principal route across the valley, traversing the mountains through the Cholame or Cottonwood pass, south of Parkfield. The following named eight routes are branches of this one.)			
21. (B) Cottonwood		Coalinga	32
(via Zapata)			
22. (B) Cholame		Tulare	111
(via Annette, Junction, Lost Hills, Wasco, Famosa, McFarland, Delano, Pixley and Tipton, this being a loop extending south of Cholame.)			
23. (B) Delano		Hanford	40
(via Angiola and Corcoran, this being a detour to the west of the route No. 20.)			
24. (B) Delano		Visalia	61
(via Ducor, Porterville, Lindsay and Exeter, being a detour from route No. 20.)			
25. (B) Junction		McKittrick	36
(Being a branch line extending south of route No. 20.)			
26. (B) Junction		Bakersfield	67
(via Lost Hills, Blackwells, Lockern, Buttonwillow and Rio Bravo, being a branch of route No. 20 extending southerly from Junction.)			
27. (B) Wasco		Bakersfield	32
(via Shafter and Rio Bravo, being a branch of route No. 20 extending south from Wasco.)			
28. (B) Famosa		Bakersfield	21
(via Lerdo, being a branch of route No. 20 extending south from Famosa.)			
29. (B) Simmler		Bakersfield	78
(via McKittrick and Taft, being a main route across the valley through Simmler Pass, the next pass through the mountains south of Cholame and Shandon.)			
30. (B) Taft		Maricopa	
(Being a branch of route No. 29 extending south from Taft.)			

In short applicant proposes to establish a service from San Miguel and Paso Robles over both the Parkfield and the Shandon-Cholame routes, and from Santa Margarita over the Shandon-Cholame and the Simmler routes, through the Coast Range into the San Joaquin Valley, serving points along the highways within an area bounded roughly by Coalinga, Mendota, Fresno, Centerville on the northwest and on the north; on the east by Sanger, Parlier, Reedley, Dinuba, Visalia, Exeter, Lindsay, Strathmore, Porterville, Ducor, Richgrove, Delano, McFarland, Famosa, Lerdo and Bakersfield; on the south by Maricopa and Taft; and on the southwest and the west by McKittrick and Junction; applicant proposing as well to serve many points within this area. Applicant also seeks permission to operate over the proposed state highway now under construction between Santa Maria and Bakersfield via Maricopa and Cuyama River, traversing in part the Santa Barbara National Forest.

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In the application authority is sought to continue the present radial service within a distance of two hundred miles from San Luis Obispo but as to this no evidence was introduced. Moreover such operations are not within the Commission's jurisdiction. (*In re Ben Moore,* 27 C. R. C. 388.)

Other than the routes which have been described over which operations will be conducted under definite schedules, applicant proposes to engage solely in an "on call" service, handling truck loads subject to a minimum of 5000 pounds, which may consist of shipments tendered by one or more shippers, in other words, composite loads. Such operations will necessarily be irregular and dependent upon the demand for the service by the shippers.

As to his scheduled operations applicant proposes to establish specific class and commodity rates predicated upon those now in effect, as shown in his tariff C. R. C. No. 1. For the "on call" service the rates on capacity loads will be established on a ton-mile basis, varying according to the classification of the shipments and subject to a minimum weight of not less than 5000 pounds and to a minimum charge of $5. Upon consolidated loads received from more than one shipper, the rates also will vary according to the classification. Applicant proposed originally to prorate upon a weight basis, the charges accruing for the aggregate load, subject to a minimum charge of $5; however, during the hearing, this tariff provision was amended so as to provide a specific charge to each shipper based upon the distance traveled by his proportion of the load subject, however, to a minimum charge. Shipments forming part of a consolidated load will be accepted subject to a delay of not exceeding fifteen days, thus affording the carrier an opportunity to accumulate sufficient freight for a capacity load of 5000 pounds, for distribution along the particular route.

In addition to the definite routes which have been described, applicant proposes to serve all points within a zone extending ten miles on either side of the highway and ten miles beyond the limits of the termini, these lateral rights being sought not only as to the proposed extensions but also in respect of applicant's existing routes. Applicant testified that this would enable him better to serve farms situated off the highway, thus performing a direct pickup and delivery service; however, in regard to this scheduled service he is seldom called upon to deviate from the highway for more than one mile.

Applicant proposes to use his existing equipment, of which he has quite a variety. However, he has made no definite estimate of what will be required to perform this service.

The proposed consolidation will enable applicant to establish through rates upon shipments moving from one operative right to another, instead of the combination of local rates, resulting in reductions in

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many instances. In addition the transfer of shipments at San Luis Obispo will be obviated, particularly as to larger shipments, it being applicant's intention to continue the transfer of smaller shipments. This will be of particular advantage in handling shipments of live stock originating at various farms which must now be transferred at San Luis Obispo. Applicant contended he had been authorized by the Commission to transport shipments between points on his operative rights north and south of San Luis Obispo (Decision No. 7535 on Application No. 4644).

Applicant described in detail the territory traversed by the proposed routes, relating with considerable particularity the agricultural products and the character of the contemplated traffic. We shall reveiw his testimony briefly, dealing first with the coast route and then with the San Joaquin Valley.

In respect to the service north of San Miguel, Mr. McConnel testified that the territory between that point and Bradley was devoted largely to raising grain and grazing stock, the ranches being quite large. San Miguel is the shipping center. Between Bradley and Watsonville apples and potatoes will move south, being now handled by peddlers, and northbound there will be occasional shipments of household goods and millwork for the Southern Pacific Milling Co. from San Luis Obispo to its lumber yards between that point and Soledad. On cross-examination applicant admitted that north of King City his route will parallel other truck lines and also the Southern Pacific rail lines for the entire distance, but he was not familiar with these truck lines nor was anything shown in this regard by protestants. He also stated he had not consulted with the shippers of Watsonville nor Salinas, having discussed the matter only with distributors in his own territory.

The proposed extension to Bayview will serve a narrow valley about twelve miles long devoted to vegetable production. It has no means of public transportation to its marketing center at San Luis Obispo. Avila, situated on San Luis Bay about two miles south of the highway, is now served by the Pacific Coast Railway and also by a motor passenger and package line conducted by one Motto. The plant of the Union Oil Company is situated here, and there are a few farms near the town. The Los Berros district, which will be served by a detour is situated in a valley about eight miles long and two miles wide, now occupied by dairy and poultry farms, and having its center at San Luis Obispo. It is now served by the Pacific Coast Railway, which follows the valley, while the main coast highway traverses the hills bordering the valley. An alternative route will be established serving Oceano, leaving the highway at Pismo and returning at Arroyo Grande, being in the nature of a detour from the main highway. The proposed route extending south from Bayview to Pecho Creek Ranch was abandoned when it

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developed that it would traverse a private road, operations over which are not subject to our jurisdiction. (*Bolton* vs. *Olson et al.*, 23 C. R. C. 968.)

Regarding the routes proposed to be established in the territory lying north of San Luis Obispo, on the west or coast side of the Salinas Valley, applicant testified similarly regarding the industries and expected traffic. The route extending from Atascadero to Morro will form a convenient outlet to this territory, now occupied chiefly by poultry ranches and small farms in the hills, and by dairy and produce farms along the coast. From Templeton a branch will serve Cayucos via Santa Rita Creek, thus affording a connection with San Luis Obispo, the principal trading point. Hay and grain are raised in the hills, and along the coast dairying and the raising of beans are the chief occupations. The branch from Paso Robles to Cayucos will serve a similar territory, finding its marketing center at Paso Robles. The San Simeon-Arroyo Grande route is merely an extension of applicant's present San Simeon line, affording communication with San Luis Obispo. Dairying and the gathering of seaweed are the principal industries. Extending westerly from Paso Robles is the Branch Ranch route, serving Nacimiento Valley where grain raising and stock grazing are still the principal industries, although almond and fruit orchards are developing. While Paso Robles is the marketing point, many supplies are brought in from San Luis Obispo. The branch extending from Paso Robles to Cienego Creek (via Klau) will serve a stock and grain country which is rapidly developing its orchards. The same territory will be topped by the proposed branch line extending from San Miguel to Adalaida, this route, however, opening a new outlet. Until recently a stock and grain country, it is rapidly being transformed into orchards, pears being raised in the hills and almonds on the lower levels. Cream is shipped to Paso Robles and San Miguel where it is used by the creameries in the manufacture of butter, some of which is sold in same district, although most of it is marketed at a greater distance. To this extent, so applicant testified, the trucking service would operate as a feeder for the railroad. The road from San Miguel to Branch Ranch will also serve the Nacimiento district, of which San Miguel has been the principal shipping point for live stock and grain, but as the orchards develop Paso Robles, because of its packing houses, may become the most important center. The same district will also be served by the proposed route from Bradley to Branch Ranch, traversing the San Antonio River district which is still largely a stock and grain country, although it is developing fruit orchards to some extent. As the river is unbridged, and is impassable during the rainy season, the traffic will then move to Bradley.

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Regarding the extension south of Orcutt, applicant testified that between that point and Gaviota, in the Santa Maria Valley, potatoes, grain and sugar beets are raised and there is considerable dairying. Beets are hauled to the sugar factory at Betteravia, potatoes are shipped either to San Luis Obispo, Santa Barbara or Santa Maria and most of the grain moves over the Pacific Coast Railway to Port San Luis. Between Gaviota and Santa Barbara the route parallels the Southern Pacific railroad, following a narrow beach or strip between the ocean and the hills along which there is little if any agricultural production, oil being produced, however, to some extent. Applicant testified regarding the shipment of supplies by the Coast Wholesale Company of Santa Barbara to its branches at Santa Maria and San Luis Obispo, but this of course is immaterial, in view of the subsequent amendment of the application so as to exclude transportation from Santa Barbara itself. This extension will parallel the line of the Los Angeles and Santa Barbara Express Company, operating an automotive freight service, but this carrier did not appear as a protestant, probably because of applicant's withdrawal from Santa Barbara.

In respect to the branch routes traversing the Santa Maria Valley south of San Luis Obispo, Mr. McConnel quite fully described the production and industries of this territory. The line from San Luis Obispo to Arroyo Grande, via Edna, will provide a shorter route than the main highway, and serving a dairying and orchard country. The Pismo-Edna cut-off will serve a region of small farms, where also there has been some oil development. The line from Arroyo Grande to Musick will traverse a narrow valley eighteen miles long now under intensive cultivation, where garden produce, apricots and apples are raised, and which is entirely without transportation, its nearest shipping point on the railroad being Oceano. The branch from Arroyo Grande to Adams Ranch traverses the Huasna Valley, occupied by grain and hog ranches, and fruit orchards. The town of Guadalupe, situated on the Southern Pacific Railroad at the mouth of the Santa Maria River, will be reached by a line leaving the coast highway at Nipomo. This is the center of a dairying country which markets its cream in San Luis Obispo, now using the facilities of the American Railway Express Company. Lettuce and beans are raised, and marketed in adjacent territory as well as more distant points. An electric railway connects Guadalupe with the Pacific Coast Railway at Santa Maria. The proposed line between Santa Maria and Guadalupe, via Betteravia, will serve a district producing sugar beets, lettuce and vegetables, and will facilitate the handling of traffic between the two towns, particularly for the wholesale houses at Santa Maria, also sugar beets will be transported to the factory at Betteravia. The Zaca-Buellton route, forming a detour to the east of the coast highway and passing through the intermediate

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points of Los Olivos, Ballard, Solvang and Santa Ynez, will serve a farming district in the Santa Ynez Valley raising fruit, nuts and farm products, and having its principal marketing center at San Luis Obispo. Los Olivos is served by the Pacific Coast Railway, but the other points are dependent entirely upon truck transportation. Closely related to this route is the branch line between Santa Maria and Zaca via Sisquoc, tapping a dairying section and an oil producing territory through which are scattered a few small trading centers. Some of the farmers now ship their cream from Los Alamos over the railroad but those at the upper end of the valley trade with Santa Maria. The branch from Los Alamos to Sisquoc via Alisos Canyon will also serve this territory as a direct outlet to the Santa Maria Valley, this being the shortest route from the farming community near Sisquoc to the railroad at Los Alamos. Lompoc, with a population of about 1500, situated upon the Santa Ynez River, is the center of a farming and dairying community. Applicant proposes to serve this town by a three branch line, viz, from Harris, Buellton and Las Cruces. The Harris route is shorter than the others, affording a direct connection to the north; the Buellton route will traverse the valley of the Santa Ynez River, serving a farming community; and the Las Cruces route affords a direct outlet to the south, through a rough and sparsely settled country. The grades on the Harris and Las Cruces routes are somewhat severe, but the Buellton road affords a water level route.

Applicant also described the routes diverging from the coast highway, piercing the coast range and traversing the San Joaquin Valley.

The route from Santa Margarita to Simmler is one of the gateways to the San Joaquin Valley. Simmler is situated in Carisa plains, a plateau in the Coast Range, where grain is the principal product, and along the route are poultry farms and stock ranches. The dairy produce is sold in San Luis Obispo, but the grain is hauled to Santa Margarita, the nearest rail point. For many years this region has been occupied by large ranches, which are gradually being cut up into small farms.

These routes are proposed between Santa Margarita and Shandon, one designated as a "cut-off," another via Creston, and a third via San Juan. The Shandon-Cholame route to the San Joaquin Valley lies northward from the Simmler route, being another principal gateway through the mountains with easier grades than the others. Shandon is a trading center on the Estrella River, surrounded by alfalfa, poultry and dairying farms, and to some extent grain is still produced. While Paso Robles is the nearest rail shipping point, the route to Santa Margarita affords a more direct connection to San Luis Obispo. Still another route will connect Shandon with Paso Robles, via Creston. North of the Creston route, another line will connect Paso Robles with

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Cholame, passing through Shandon. Cholame, situated further east along this pass, is the center of a stock raising country, trading principally with San Luis Obispo and Paso Robles. Diverging northward, another route will connect Shandon with San Miguel, via Estrella, where a dairying country will be found along the river bottom, and apples and fruit are raised in the hills. North of Shandon is the Parkfield route through the mountains, connecting Coalinga with the coast. A branch line extending from Paso Robles to Parkfield via Hog Canyon will serve a territory largely engaged in dairying and stock raising, San Luis Obispo being the principal center. In the vicinity there has been some development of oil and quicksilver, but important results have not been achieved. Another route will connect Parkfield with San Miguel. Still further north a branch route will connect San Miguel with Stone Canyon, but this road does not pierce the mountains. It will serve a few ranches engaged in raising stock and hogs, and will also transport supplies to the Stone Canyon Coal Company.

During the summer season operations from San Miguel and Paso Robles will be conducted over the Parkfield route, via Coalinga and Oil City, and thence to Fresno via Mendota or Lemoore. Since the road is rather steep, with sharp turns, and slides occur frequently in winter, during that season operation from San Miguel or Paso Robles will be conducted via Shandon and Cholame, Stratford and Lemoore to Fresno, the Parkfield route, however, being open excepting from December to March. Traffic destined to the upper San Joaquin Valley will follow the Shandon route, thence via Junction, Lost Hills, Wasco and Rio Bravo to Bakersfield, and points on the east side of the valley will be reached via McKittrick, Taft and Maricopa. If occasion demands, a loop service will be conducted, entering Bakersfield via McKittrick and Taft, and returning via Wasco and Lost Hills.

Still another route was proposed from Santa Maria via Maricopa, but this, as we have stated, is under construction.

Applicant testified that grapes and fruit originating at Lemoore, Armona, Hanford, Goshen and Visalia would move via Parkfield to the coast, and there would also be occasional shipments of household goods to the beach resorts. The grape and melon shipments would average about ten tons a day during the season, but the volume of household goods would be small. The packing houses of the valley market some of their raising on the coast, and occasionally machinery must be transported over the mountains. Parkfield is the most direct route over which most of this tonnage would move.

The Oil City-Mendota-Fresno line, and the Oil City-Helm-Fresno line radiate from the main Parkfield route, affording service to intermediate communities. The Lemoore-Carruthers-Fresno line is tributary to the Cholame route, as is also the Hanford-Layton-Fresno line. Through-

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out this territory between Hanford and Fresno, grapes, fruit and melons are the principal products but some vegetables are raised in the vicinity of Kingsburg, Fowler and Selma, much of which is shipped to the coast. In addition blooded live stock are quite frequently hauled to the coast in order to build up the herds. The line via Goshen, Selma and Fresno is an alternative route, branching from the main route between Lemoore and Visalia. The Visalia-Reedley-Fresno line will tap the citrus belt. There is quite a movement to the coast, oranges being produced here earlier than in southern California. Grapes are also raised in this territory and marketed on the coast. The Coalinga-Stratford-Lemoore line serves a dairying country, affording an outlet to the coast via Parkfield. The Paso Robles-Cottonwood Pass-Visalia route is an alternative route from Cholame to Stratford serving a farming country in the western San Joaquin Valley. Oil well machinery is frequently transported from the coast to points in the valley, and there is also a movement of household goods of employees transferred from one district to another and, as the country is quite barren, there is a heavy demand for vegetables produced on the coast. This oil district extends from about twenty miles north of Coalinga, southward to Maricopa. The route from Cholame to Lost Hills has been graded, being therefore superior to the other routes, and open when they are impassable because of weather conditions. There has been some agricultural development in the Lost Hills region and recently the production of cotton has commenced but the oil development is predominant.

The route from Delano to Hanford, via Corcoran, is the most direct line from Fresno to Wasco. Corcoran is the center of a dairying district from which blooded stock are shipped to the coast. From Delano another line radiates to Porterville and Visalia, serving a district from which there is a heavy movement to San Luis Obispo. Many ranchers in this territory visit the coast frequently and have occasion to transport their household goods. From Junction, where the pipe lines of the Union Oil Company fork, and McKittrick there is a considerable movement of oil well machinery to the coast fields. In this territory there is considerable demand for produce, poultry and eggs from the coast, much of this traffic originating at Paso Robles and near Shandon. South of this a line will branch easterly through Lockern and Bakersfield, serving a developing agricultural territory, where potatoes, vegetables and cotton are raised. The line extending from Wasco to Bakersfield, via Shafter and Rio Bravo, is an alternative route serving an oil district which is to some extent an agricultural territory where potatoes and onions are raised, as well as some grapefruit and cotton. On the coast there is a ready market for the potatoes

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and onions. The line from Famosa to Bakersfield, via Lerdo, although not serving an agricultural district, will be convenient as a return route. The line from Simmler to Bakersfield, via McKittrick, will afford the most direct access to the west side oil fields, where there is a heavy movement of vegetables from the coast. The extension south to Maricopa will enable applicant to serve Maricopa, where there is considerable consumption of vegetables, this being true, also, at Taft and Fellows. In addition, poultry and eggs are shipped in considerable quantities, and household goods are moved occasionally.

Testifying generally regarding the development of the proposed service, Mr. McConnell stated that along the coast the farmers quite frequently pool their shipments but do not as a rule own their own trucks, depending rather upon equipment hired from others. Quite often their crops are sold to peddlers considerably below the market price and for this reason the farmers would welcome a dependable transportation service. Along the coast there is a constant rotation of crops, so that there will be a continuous flow of traffic throughout the year. This will be true also between the San Joaquin Valley and the coast, the various fruits and vegetables coming upon the market at different times. In general it may be said that citrus fruits, produce, vegetables, melons, berries, grapes, poultry, canned goods and blooded stock will move between the valley and the coast. The agricultural region extends westward toward the coast from Paso Robles for about twenty-five miles, and eastward toward the valley for about fifty miles. Throughout this coast territory the subdivision of the larger ranches into small farms is constantly progressing. In conducting the "on call" service drivers will receive orders from farmers and merchants to be filled in nearby towns, and frequently instructions for the shipment will be telephoned to them. Ordinarily equipment will be supplied within eighteen hours after receipt of orders, although a greater time is reserved by the tariff rules, applicant's opinion in this regard being influenced by the circumstance that a large portion of his business will be controlled by the consignees who generally will be situated in the coast territory where his headquarters are located.

Applicant called many witnesses in support of his proposals. We shall deal first with the testimony affecting the coast line, and later with that concerning the San Joaquin Valley.

A produce farmer having three hundred acres under cultivation in Los Osos Valley said he would use applicant's service for handling shipments to San Luis Obispo, consisting of supplies, farm equipment and lumber, the volume averaging about 12 tons a year. The agent for the Union Oil Company at Santa Maria testified that the company maintained supply stores at Los Olivos and Lompoc, from which it was necessary frequently to draw supplies. Generally company trucks were

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used, the rail service being too slow and requiring transfer to and from the terminals. Usually these are emergency shipments, which move about three times a week. He stated he would use applicant's proposed service, were it established. A merchant at Guadalupe testified that he received supplies frequently from San Luis Obispo, and occasionally from Santa Maria, such shipments moving by rail, which in some instances has proved unsatisfactory because of delays encountered. He would be interested in a truck service such as that proposed by applicant, principally because of the store door delivery and expeditious service, although he would be unwilling to pay any rate substantially in excess of the rail rates. The manager of a roofing business at San Luis Obispo stated he marketed his products in the territory extending from Santa Barbara to Soledad, the shipments averaging about fifteen tons a month, although shipments to Soledad itself are infrequent. Trucks are used ordinarily and if applicant's service were extended along the coast he would patronize it. Mr. A. Irvine, district manager of the Golden State Milk Products Company for the territory extending from King City south to Ventura, stated he had used applicant's existing service and found it satisfactory. However, it appears he would seldom, if at all, have any need of applicant's service to points where it is proposed to be extended, for shipments moving from San Luis Obispo. Although cream is shipped from Harris to San Luis Obispo, the proposed tri-weekly service will be inadequate because of the late arrival at San Luis Obispo, the railway express service better meeting his needs. However, he would use the service for hauling cream from Los Osos Valley to San Luis Obispo, this territory not being served by rail. The local manager of the Coast Wholesale Grocery Company, at San Luis Obispo, was also called by applicant. The main office is in Los Angeles and branches are maintained at San Luis Obispo, Santa Maria, Santa Barbara and Ventura. At present canned milk is received by rail from Gonzales, the service being satisfactory. The company does not favor "drop" shipments from the creamery at Gonzales, to intermediate points, which are not handled through the store at San Luis Obispo. In his judgment milk can not be shipped any cheaper than at present. He also receives occasional shipments of potatoes from Salinas and Watsonville but would continue to use the rail service, as applicant's rates are too high. The Meyenburg Company at Salinas handles condensed milk on its own trucks, a service which can not be improved. The "on call" service north of King City would be of little use, since shipments aggregating the minimum of five thousand pounds are seldom made; however, such shipments may occasionally move to points intermediate to San Miguel and King City, provided the rates

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are satisfactory. The same is true as to the handling of sugar from the factory at Betteravia to Santa Maria, where it has been found cheaper to use the company's own trucks. Upon cross examination, the witness stated applicant's rates were too high, possibly he might use the service between Santa Maria and Harris, but this would depend upon the rates; shipments now move via the Pacific Coast Railway and ordinarily the routing is not controlled by the company. The tri-weekly service, however, will be sufficient. Quite frequently, shipments move by company trucks from both Santa Maria and San Luis Obispo to Lompoc, but whether it would substitute applicant's service depends upon the rates; on cross examination, the witness stated the proposed rates were too high. Shipments are made to Buellton, Los Olivos, Solvang and Santa Ynez but not in sufficient quantities to insure a minimum load. Shipments to Buellton and Solvang are now handled by company trucks from the store at Santa Barbara, but Santa Maria is preferable since the steep grades of Gaviota Pass would thus be avoided. It is doubtful whether a minimum load can be obtained from San Luis Obispo, although possibly shipments destined to all these points might be combined. Apparently this store will have small occasion to use applicant's proposed service. The manager of Swift & Company, having jurisdiction over the territory extending from King City to Santa Barbara, testified that his company was engaged in shipping butter and receiving cream in this area. Cream is received from Los Osos Valley, where there is a need for transportation. At present cream and milk are handled by American Railway Express from Betteravia and Guadalupe to San Luis Obispo, but since the company makes no free delivery of cream, the witness would prefer a motor truck service, which also would obviate the necessity of farmers hauling to the railroad station. The proposed rates are satisfactory. Their shipments will move from San Luis Obispo as far south as Buellton, including Betteravia, Guadalupe, Harris, Lompoc and Solvang; and although Lompoc is served by rail a truck service would be of particular advantage in that it will eliminate a transfer charge for hauling to the depot. Butter and cheese are shipped from San Luis Obispo south throughout the territory proposed to be served by applicant, orders being taken by the salesmen at Santa Barbara and filled at San Luis Obispo; and for this purpose applicant's service will be used except at Oceano, where the existing facilities are satisfactory. On cross-examination the witness testified that a tri-weekly service would be adequate, since the farmers as a rule do not make daily shipments; in addition he stated the time of arrival at San Luis Obispo would be satisfactory. Their shipments throughout this territory are quite substantial. The manager, at San Luis Obispo, for Southern Pacific Milling Company, stated the company was engaged

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in the warehouse business, including the handling of grain and lumber, its warehouses extending from Salinas to Moorpark. Lumber and millwork are shipped from San Luis Obispo to Salinas, but applicant's service would rarely be utilized, it being doubtful whether shipments would aggregate the required minimum weight. Small shipments are made occasionally to Soledad for which this service would be used; a daily service between San Luis Obispo and Oceano, where a warehouse is situated, would be quite advantageous, as the existing transportation service is inadequate and slow; occasional shipments are made to Guadalupe; and a tri-weekly service to Santa Maria Valley points, including Lompoc would be patronized. In addition, witness testified he was the local distributor for the Sperry Flour Co., receiving flour in carload lots at San Luis Obispo and distributing it through this territory as far south as Lompoc, in connection with which the proposed service would be used. Shipments of lumber, exceeding the minimum of 5000 pounds, move as far north as Bradley and King City, for which applicant's proposed "on call" service would be desirable if the rates were satisfactory, the witness being unable to state, however, whether the company would pay the rates proposed. Upon lumber moving to Lompoc, he believed the proposed rate was too high, it being possible to ship by rail for much less. The agent at Oceano, for the Southern Pacific Milling Company, stated he made frequent shipments from San Luis Obispo, and for that purpose would use applicant's proposed service. The existing service conducted by the Hearne Auto Truck Line was inadequate and unsatisfactory, the regular service being neglected when more profitable special hauling was available. Mr. Hearne was notified of the hearing but did not appear as a protestant.

Several witnesses were called relative to the need of transportation between the coast and the San Joaquin Valley, whose testimony we shall summarize.

Two truck farmers of the Arroyo Grande Valley stated that at present the transportation of agricultural products between these two regions was conducted entirely by peddlers, who were unreliable and unsatisfactory, paying less than the market price for the commodities they purchased, and frequently failing to appear when promised, thereby causing considerable loss to the farmers. The products of this valley are quite varied, including vegetables of all descriptions, and apples. A service such as that proposed, affording the farmers an opportunity to consolidate their shipments, would be well patronized and is needed. Their products are marketed in the oil fields near Bakersfield, and also at Visalia. Many of the farms are situated off the highway, so the proposed lateral service would be quite convenient. At times, when there has been an over-production

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on the coast, ready access to the valley would have resulted in considerable saving to the farmer, but as this has been prevented by inadequate transportation facilities, the farmers have suffered by falling prices due to the unnaturally restricted market. A poultry, feed and grain dealer, of Paso Robles, stated that he was shipping eggs to Taft, McKittrick and some other oil towns when he could hire the trucks—his sales averaging over two hundred cases a year, which could be increased substantially were better transportation available. He stated he would patronize applicant's proposed "on call" service. Milo and kaffir corn, averaging 400 tons a year, are shipped from Wasco in hired trucks or by rail and a small quantity of seed is brought from Fresno. This also would be diverted to applicant, were he permitted to operate.

The manager of a fruit packing house at Kingsburg testified there was a substantial movement of fruit from that vicinity to the coast, extending from San Miguel south to Orcutt; the movement of grapes was quite heavy, but he could not estimate the volume of cantaloupes. There is also a substantial movement of oranges. Much of the fruit shipped to the coast is overripe or otherwise unsuitable for transcontinental shipment, therefore it is marketed close at hand. Practically all these commodities move by truck. The assistant superintendent of Producers Transportation Co., a subsidiary of the Union Oil Co., operating pipe lines between San Luis Obispo and San Joaquin Valley oil fields, testified that the company used two trucks for hauling supplies and emergency equipment between its pumping stations, and would occasionally make use of a motor truck service such as that proposed by applicant. Occasionally, employees are transferred from one point to another, so there is a need for the transportation of their household goods, but this is rather infrequent. The superintendent of the same company testified that occasionally the proposed service might be used between the coast and the valley for hauling repair parts for pumps, which will sometimes weigh as much as three or four tons. No shipments, however, would be made to Lompoc, that field having been shut down, but if it is ever reopened, applicant's service will be needed. A real estate salesman, at Morro Bay, testified that many summer resort sites have been sold to residents of the San Joaquin Valley, in the territory between Fresno and Bakersfield, and that in his opinion applicant's proposed service will be needed for transporting household goods between the valley and Morro Bay. A wholesale grocer at San Luis Obispo stated that a trucking service from San Joaquin Valley to San Luis Obispo would be advantageous to him in his business. The assistant manager of a San Luis Obispo wholesale grocery concern stated the proposed "on call" service from the San Joaquin Valley would be used for handling dried fruit in

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quantities exceeding the proposed minimum. The district manager of the Midland Counties Public Service Corporation, having jurisdiction of the territory from San Luis Obispo to Arroyo Grande, stated that a truck service would be used for handling supplies from Fresno to San Luis Obispo, such shipments averaging about twelve tons a month. However, he was unable to estimate the requirements of the territory in the vicinity of Santa Maria and Lompoc, with which he was not concerned. A retail grocer of San Luis Obispo stated he frequently purchased vegetables and melons in substantial quantities, hauled by peddlers from Shafter, near Bakersfield; the vegetables sold by the peddlers, however, were usually of inferior quality and the service was not dependable. Consequently he expressed a need for a trucking service such as proposed.

The granting of this application was protested by Southern Pacific Company, American Railway Express Company and Pacific Coast Railway Company. During the hearing applicant stipulated he would handle no freight between San Joaquin Valley points, on the one hand, and coast territory north of and including King City, on the other hand; and with that understanding protestants withdrew their opposition to the application in so far as it related to operations between San Joaquin Valley points and points south of King City, on the coast. Protestants, however, objected to any extension of applicant's service along the coast wherever it paralleled their own line.

On behalf of protestant American Railway Express Company its route agent described its service, introducing an exhibit showing the trains operated in the coast territory upon which express was carried. Generally speaking, there are three trains daily in each direction between Santa Barbara and Gilroy, and two additional trains between Gilroy and Salinas; from Surf a branch line extends to Lompoc, over which there is one round trip daily. Over the Pacific Coast Railway there are two trains daily handling express, one operating through to Los Olivos, and the other terminating at Orcutt, and this carrier also operates one round trip daily to Avila. For practical purposes, as shown by the scheduled times of arrival and departure in their relation to ordinary business hours, there are but two services daily between Santa Barbara and San Luis Obispo in either direction, and the same is true between San Luis Obispo and Salinas. The witness testified that the company maintained a pick-up and delivery service at Guadalupe, King City, Lompoc, Paso Robles, Salinas, San Luis Obispo, Santa Maria and Watsonville; and that the only nonagency stations in this territory were Goleta (a suburb of Santa Barbara), Edna, Pismo and Avila. The free pick-up and delivery service is not ordinarily extended to milk, this being the only commodity excepted, but under a slightly higher rate this service will be accorded.

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On behalf of protestant Southern Pacific Company one of its operating officials described its freight service over the coast line between Gilroy and Santa Barbara. A daily service is maintained between Gilroy and San Ardo, including the intermediate points of Watsonville Salinas, Gonzales and King City. From San Ardo to San Luis Obispo a tri-weekly service is maintained, and the same is true from San Luis Obispo to points south as far as Santa Barbara. However, between San Luis Obispo and Santa Barbara itself a daily car is operated; also a daily car is operated between Watsonville and San Luis Obispo. A through car is operated weekly from San Luis Obispo to Lompoc, there not being sufficient tonnage to warrant a more frequent service, freight moving to Lompoc on other days being transferred at Surf. The witness described the schedules, from which it appears that ordinarily freight is available for delivery on the second day after shipment, although on schedules leaving on Mondays, for practical purposes the time is somewhat longer because of the necessity for tendering freight for shipment on the preceding Saturday. The witness testified that more frequent service would be maintained if warranted by the traffic offered.

No evidence was offered on behalf of protestant Pacific Coast Railway Company.

The evidence indicates a need for the extension of applicant's present service southerly from Orcutt to (but not including) Santa Barbara; but it does not warrant any extension north of King City, applicant having failed to show any need for the service as to points north thereof, such as Soledad, Gonzales, Salinas and Watsonville. In our opinion applicant has justified the proposed branches diverging from its main coast route, and has also established the necessity for service between points in the San Joaquin Valley and the coast. Our order authorizing this service, however, will embody the stipulation made at the hearing. The certificate granted, it must be understood, will authorize only an "on call" or "on demand" service over the routes described as such in the application, and applicant will not be permitted to transform this into a scheduled service without further authority from the Commission. Moreover, we can not permit the consolidation of the "on demand" service with applicant's scheduled operations until it is prepared to establish such service upon a regular basis, in which event further authority should be sought from the Commission. (*In re H. M. Tolson,* Decision No. 14606, 26 C. R. C. 68.) The order will permit the consolidation of the existing and the proposed scheduled operations, which, in our opinion, is justified by the evidence. Inasmuch as the state highway between Santa Maria and Bakersfield via Maricopa and the Cuyama River is still under construction, this route should not be entertained in the present application.

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This has been the universal practice of the Commission in the past, many applications having been denied solely because the highway over which operations were proposed have not been completed and accepted by the proper public authorities. To this extent, therefore, the application will be denied.

Upon full consideration of the evidence, we are of the opinion, and hereby find as a fact, that public convenience and necessity require the operation by E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, of an automobile truck service for the transportation of property, as a common carrier, over and along the routes described in the foregoing opinion and more specifically described in the order herein.

E. L. McConnel is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

We are of the opinion, and hereby further find as a fact, that public convenience and necessity do not require the operation by said E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, of an automobile truck service for the transportation of property, as a common carrier (a) between King City and Watsonville and intermediate points; nor (b) between Santa Maria and Bakersfield, via Maricopa and the Cuyama River Valley and intermediate points.

An order will be entered accordingly.

ORDER.

A public hearing having been held in the above entitled matter, the same having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact which appear in the opinion preceding this order:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, of an automobile truck service for the transportation of property, as a common carrier, and the extension of said applicant's present service, over and along the following routes, serving all termini and intermediate points, to wit:

(1) Between Ontario and Avila;

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(2) From Arroyo Grande to Los Berros, returning to the coast highway at Nipomo, and vice versa;

(3) From Los Osos-Morro Junction to Morro and Bayview, returning to the coast highway at Morro, and vice versa;

(4) From Pismo to Grover and Oceano, returning to the coast highway at Arroyo Grande, and vice versa;

(5) From Santa Maria to Betteravia and Guadalupe, returning to the coast route at Nipomo, and vice versa;

(6) Between Harris and Lompoc.

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to said E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, for the establishment and operation of an automotive freight service over and along the routes hereinabove specifically described, to be conducted under regular schedules to be published and filed with the Commission, subject to the conditions hereinafter set forth.

The Railroad Commission of the State of California hereby further declares, that public convenience and necessity require the operation by said E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, of an automobile truck service for the transportation of property as a common carrier "on demand" or "on call" and within such time after request for transportation by shippers as may be provided in his tariffs hereafter to be filed with the Commission and handling only truck loads consisting of single or consolidated shipments, for one or more shippers, subject to a minimum weight of five thousand pounds for each truck or vehicle operated in said service, over and along the following routes, serving all termini and intermediate points, and within a zone extending ten miles on each side of the highway traversed by said routes and each of them, and beyond the limits of said termini, to wit:

(1) Between Bradley and Branch Ranch;

(2) Between San Miguel and Branch Ranch, serving the Nacimiento district;

(3) Between San Marcos Creek Junction and Adalaida;

(4) Between Paso Robles and Cayucos;

(5) Between Paso Robles and Branch Ranch, via Adalaida, serving the Nacimiento district;

(6) Between Paso Robles and Cienego Creek Crossing, via Klau;

(7) Between Templeton and Cayucos, via Santa Rita Creek;

(8) Between Atascadero and Morro;

(9) Between San Luis Obispo and Arroyo Grande, via Edna;

(10) Between San Simeon and Arroyo Hondo, via Washington School;

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(11) Between Pismo and Edna;

(12) Between Arroyo Grande and Musick, via Santa Manuela;

(13) Between Arroyo Grande and Adams Ranch, serving the Huasna Valley;

(14) Between Nipomo and Guadalupe;

(15) Between Santa Maria and Guadalupe, via Betteravia;

(16) Between Santa Maria and Zaca, via Geary, Foxen and Sisquoc;

(17) Between Harris and Lompoc, via Purisima Mission;

(18) Between Los Alamos and Sisquoc, via Alisos Canyon;

(19) Between Zaca and Buellton, via Los Olivos, Ballard, Santa Ynez and Solvang;

(20) Between Buellton and Lompoc, via Santa Rita and Purisima Mission;

(21) Between Las Cruces and Lompoc, via Yridisis Creek and Los Alamos Creek;

(22) Between San Miguel and King City;

(23) From Orcutt to (but not including) Santa Barbara, and vice versa;

(24) Between San Miguel and Parkfield;

(25) Between San Miguel and Stone Canyon;

(26) Between San Miguel and Fifteen Mile Bridge, via Estrella on the Shandon-Cholame road;

(27) Between Paso Robles and Parkfield, via Estrella and Hog Canyon;

(28) Between Paso Robles and Cholame, via Shandon;

(29) Between Paso Robles and Creston;

(30) Between Santa Margarita and Shandon (cut-off);

(31) Between Santa Margarita and Shandon, via Creston and Huero Huero detour;

(32) Between Santa Margarita and Shandon, via San Juan over the Simmler-Shandon cut-off;

(33) Between Santa Margarita and Simmler, via La Panza;

(34) Between Parkfield and Visalia, via Coalinga, Oil City, Lemoore, Armona, Hanford and Goshen;

(35) Between Oil City and Fresno, via Mendota;

(36) Between Oil City and Fresno, via Helm;

(37) Between Lemoore and Fresno, via Carruthers;

(38) Between Hanford and Fresno, via Laton and Fowler;

(39) Between Goshen and Fresno, via Travers, Kingsburg, Selma and Fowler;

(40) Between Visalia and Fresno, via Dinuba, Reedley and Sanger;

(41) Between Coalinga and Lemoore, via Stratford;

(42) Between Cholame and Visalia, via Cottonwood, Stratford, Guernsey and Tulare, over the Cholame or Cottonwood-Pass route;

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(43) Between Cottonwood and Coalinga, via Zapata;

(44) Between Cholame and Tulare, via Anette, Junction, Lost Hills, Wasco, Famosa, McFarland, Delano, Pixley and Tipton;

(45) Between Delano and Hanford, via Angiola and Corcoran;

(46) Between Delano and Visalia, via Ducor, Porterville, Lindsay and Exeter;

(47) Between Junction and McKittrick;

(48) Between Junction and Bakersfield, via Lost Hills, Blackwells, Lockern, Buttonwillow and Rio Bravo;

(49) Between Wasco and Bakersfield, via Shafter and Rio Bravo;

(50) Between Famosa and Bakersfield, via Lerdo;

(51) Between Simmler and Bakersfield, via McKittrick and Taft;

(52) Between Taft and Maricopa.

It is hereby further ordered, that a certificate of public convenience and necessity be and the same is hereby granted to said E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company for the establishment and operation of an automotive freight service over and along the fifty-two (52) routes last hereinabove specifically described, subject to the conditions hereinafter set forth.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the consolidation and unification of the operative rights of said E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, as one unified system of through service for the transportation of property, as a common carrier, between all the termini and intermediate points served by and along the several routes hereinafter described, upon which operations are and will be conducted under regular schedules filed with the Commission, to wit:

1. Between San Luis Obispo and San Miguel, and intermediate points, granted by Decision No. 5469, dated June 6, 1918, and Decision No. 5621, dated July 26, 1918, on Application No. 3807, and by Decision No. 7070, dated February 5, 1920, on Application No. 4588;

2. Between San Luis Obispo and Orcutt, and intermediate points, granted by Decision No. 7535, dated May 3, 1920, on Application No. 4644;

3. Between San Luis Obispo and San Simeon, and intermediate points, granted by Decision No. 11354, dated December 13, 1922, on Application No. 8487; Decision No. 13000, dated January 9, 1924, on Application No. 9571; and Decision No. 14347, dated December 9, 1924, on Application No. 10636;

4. Between Ontario and Avila, and intermediate points;

5. From Arroyo Grande to Los Berros returning to the coast highway at Nipomo, and vice versa, serving also intermediate points;

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6. From Los Osos-Morro Junction to Morro and Bayview, returning to the coast highway at Morro, and vice versa, serving also intermediate points;

7. From Pismo to Grover and Oceano, returning to the coast highway at Arroyo Grande, and vice versa, serving also intermediate points;

8. From Santa Maria to Betteravia and Guadalupe, returning to the coast highway at Nipomo, and vice versa, serving also intermediate points;

9. Between Harris and Lompoc, and intermediate points.

Provided, however, that nothing herein contained shall operate to invest the applicant with the right to serve any intermediate point or points upon or along the several routes now served by him, which have not heretofore been granted or authorized by any of the certificates hereinabove described.

It is hereby further ordered, that a certificate of public convenience and necessity be and the same is hereby granted to said E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, consolidating and unifying the operative rights and routes last hereinabove described, permitting him to operate the same as one unified system, and authorizing the operation of through service for the transportation of property between all termini and intermediate points served by and along said several routes or operative rights, as to which a regularly scheduled service has been authorized by this order, as hereinabove described, subject to the conditions hereinafter set forth.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the consolidation and unification of the operative rights of said E. L. McConnel, doing business under the fictitious name and style of Valley and Coast Transit Company, as one unified system of through service for the transportation of property, as a common carrier, between all the termini and intermediate points served by and along the fifty-two (52) routes, over and along which an "on demand" or "on call" service has been authorized and permitted by the terms of this order, as hereinabove set forth; *provided, however,* that applicant shall not consolidate or merge such "on call" or "on demand" service or operation herein authorized, or any part thereof, with the service now conducted or herein authorized to be established by applicant, under the regular schedules hereinabove specifically described, without first obtaining permission therefor from the Commission, by appropriate supplemental application in this proceeding.

It is hereby further ordered, that a certificate of public convenience and necessity be and the same is hereby granted to said E. L. McConnel, doing business under the fictitious name and style of Valley and

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Coast Transit Company, consolidating and unifying the operative rights and routes hereinabove described, permitting him to operate the same as one unified system and authorizing the operation of through service for the transportation of property between all termini and intermediate points served by and along said several routes or operative rights, as to which an "on call" or "on demand" service has been authorized by this order, as hereinabove described, subject to the conditions hereinafter set forth.

It is hereby further ordered, that in all other respects said application be and the same is hereby denied.

The authority herein granted is subject to the following conditions:

1. Applicant shall transport no freight between any point or points upon its lines in the San Joaquin Valley, herein authorized to be established, on the one hand, and any point or points upon its coast lines, north of and including King City, herein authorized to be established, on the other hand.

2. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

3. Applicant shall file, in duplicate, within a period of not to exceed thirty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twenty-first day of April, 1928.

DECISION No. 19652.

IN THE MATTER OF THE APPLICATION OF VALLEJO AND NORTHERN RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS MAIN LINE TRACKS AT GRADE ACROSS THE TRACKS OF SOUTHERN PACIFIC COMPANY IN THE TOWN OF SUISUN, SOLANO COUNTY, STATE OF CALIFORNIA.

Application No. 407.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK

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AT GRADE ACROSS THE TRACKS OF CEMENT, TOLENAS AND TIDEWATER RAILROAD COMPANY NEAR CEMENT IN THE COUNTY OF SOLANO, STATE OF CALIFORNIA.

Application No. 459.

Decided April 21, 1928.

CROSSING.—Authorization granted to install crossing across tracks of Southern Pacific Company at Union avenue, Suisun, Solano County, revoked.

C. W. Dooling, for Applicant.
H. W. Hobbs, for Southern Pacific Company.
N. E. Keller, for the Cement, Tolenas and Tidewater Railroad Company.

BY THE COMMISSION.

OPINION.

By order of the Commission, dated December 2, 1927, the above entitled proceedings were reopened for further hearing and determination and a public hearing thereon was held before Examiner Hanford at Fairfield at which time the matters were duly submitted and are now ready for decision.

Brief histories of the two proceedings are as follows:

Application No. 407, relating to the crossing of Southern Pacific Company's tracks in the town of Suisun by Vallejo and Northern Railroad Company, predecessor in interest of Sacramento Northern Railway, was filed on February 15, 1913. The Commission in its Decision No. 607, dated April 25, 1913, ordered and under grade crossing to be constructed, one-half the cost of construction to be paid by applicant and one-half by Southern Pacific Company and the cost of such abutting property damage as might be assessed, to be paid by the cities of Suisun and Fairfield on the property within their respective limits.

The grade separation was to be completed within one year. Pending completion of the grade separation a temporary grade crossing was permitted. Numerous extensions of time were granted by the Commission in which to complete the grade separation and maintain the temporary grade crossing, the last extension expiring on December 31, 1925. On March 24, 1927, the Commission addressed a letter to Mr. J. B. Rowray, general manager of the Sacramento Northern Railway, requesting to be advised as to the company's plans with respect to the crossing. On March 26, 1927, Mr. Rowray advised by letter that he was taking the matter up with the executives of the company and would advise the Commission on receipt of information from them. On October 11, 1927, Mr. Rowray submitted plans (Exhibit No. 1) for installation of derails on Sacramento Northern track, the derails to be operated by the crossing flagman, but made no further report as

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to the position of the company. The matter was accordingly reopened for further determination as set forth above.

Application No. 459, covering the crossing of the Cement, Tolenas and Tidewater Railroad Company by the Northern Electric Railway Company, predecessor of Sacramento Northern Railway, was filed on March 20, 1913. In Decision No. 614, dated April 28, 1913, the Commission directed that a grade separation be constructed within one year. A temporary grade crossing was authorized, pending the completion of the undergrade crossing. On October 31, 1913, in Decision No. 1061, the Cement, Tolenas and Tidewater Railroad Company was relieved from stopping its trains before passing over the crossing and derails were ordered installed by Northern Electric Railway Company. Several extensions of time, in which to construct the subway, were granted by the Commission. On June 29, 1917, the time was extended until further order of the Commission.

The record of the hearing of January 20, 1928, shows that passenger train service of Sacramento Northern Railway has recently been discontinued over these two grade crossings (Decision No. 18053, dated March 14, 1927, on Application No. 13486). Since the hearing, Cement, Tolenas and Tidewater Railroad Company has been authorized to discontinue passenger train service on its line, Decision No. 19494, dated March 19, 1928, on Application No. 14466.

The evidence shows that the train movements of the electric road over the tracks of Southern Pacific Company at Suisun consist almost entirely of movements by light motor; that there are practically no freight movements over the electric road in and out of Suisun; and that there is no immediate prospect of such movements. It further appears that the light motor movements are due solely to the fact that the crew lives in Suisun and that the existing track facilities for tieing up the motor over night are located on the Suisun side of the crossing. Some of the light motor movements over the crossing are occasioned by the crew going home to lunch in Suisun. The only business house served by the electric road in Suisun is the Pierce Warehouse and Mr. J. B. Rowray, general manager of the Sacramento Northern Railway, testified that this warehouse would probably not be used for the storage of canned goods in the future by the Winters Canning Company for the reason that this company has just completed construction of a new warehouse in which to store their canned goods. The Sacramento Northern track on the Suisun side of the crossing is only about 3000 feet long. The average monthly maintenance of this crossing is $25 which is paid by Sacramento Northern Railway, and the cost of the human flagman to this company is $34.90 a month, a total monthly cost to this company of $59.90.

From the record in this proceeding, it is evident that public con-

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venience and necessity do not, at the present time, require the maintenance of the temporary grade crossing. However, Sacramento Northern Railway has before the Interstate Commerce Commission a proceeding (F.D. 6633) in which it is proposed to connect this isolated Suisun-Vacaville branch line with the San Francisco-Sacramento Railroad. This proposed connecting line crosses Southern Pacific Company's main line at Cannon about four and one-half miles easterly of the crossing under consideration in this proceeding. It may be that if this connecting line is constructed, that passenger service will be resumed on the Suisun-Vacaville branch of Sacramento Northern Railway and that the branch may become of sufficient importance to require a grade separation, as ordered in Decision No. 607, as Southern Pacific tracks are heavily traveled, train and yard movement over this crossing approximating a total of from 60 to 75 per day.

Although the executives of the interested railroads favor the retention of the crossing, it appears to the Commission as proper to continue only that portion of the order in Decision No. 607 requiring the construction of a grade separation at this crossing but postponing the date of construction to such time as the traffic justifies it, and to revoke that portion of said decision authorizing the construction and maintenance of the temporary crossing at grade.

The record, with respect to Application No. 459, shows that train movements on both the Sacramento Northern Railway and Cement, Tolenas and Tidewater Railroad Company are few in number, and, it further appears, have recently been curtailed to purely freight movements. The grade crossing is protected by derails. It is possible that practically all movements over the Cement road may cease in the not distant future, as the plant is to be maintained only as a stand-by plant. Under these conditions, it appears that a grade separation is not necessary at this location and that the existing protection, if properly maintained and operated, is adequate. It therefore appears that Decision No. 614, dated April 28, 1913, on Application No. 459, should be revoked and a new order issued on the proceeding, authorizing a permanent crossing at grade.

ORDER.

The above entitled proceedings having been reopened by the Commission on December 2, 1927, for further hearing and determination, a public hearing having been held, the matters having been duly submitted and now ready for decision;

It is hereby ordered, that the authority granted to Vallejo and Northern Railroad Company under Decision No. 607, dated April 25, 1913 (Application No. 407), to install crossing frogs and to operate its trains and cars at grade across the tracks of Southern Pacific Com-

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pany at Union avenue, Suisun, Solano County, be and it is hereby revoked and annulled.

It is hereby further ordered, that Sacramento Northern Railway shall, at its own expense, remove or have removed said temporary crossing from Southern Pacific Company's tracks and restore said tracks with continuous running rail corresponding to rail in tracks adjacent to said crossing.

It is hereby further ordered, that Sacramento Northern Railway be and it is hereby relieved from participation in the cost of maintaining human flagman or flagmen or other protection at said crossing or at the crossing of Union avenue with Southern Pacific Company's tracks.

It is hereby further ordered, that in all other respects this Commission's Decision No. 607, heretofore entered in Application No. 407, shall remain in full force and effect, except that the construction of grade separation shall not be commenced until further order of this Commission.

It is hereby further ordered, that Decision No. 614, dated April 28, 1913, and Decision No. 1061, dated October 31, 1913, on Application No. 459, be and they are hereby revoked and annulled.

It is hereby further ordered, that Sacramento Northern Railway be and it is hereby authorized to maintain and operate its track at grade across the tracks of Cement, Tolenas and Tidewater Railroad Company, at the location temporarily authorized in said Decisions No. 614 and No. 1061, subject to the following conditions:

1. All trains, motors and cars of Sacramento Northern Railway, before passing over said crossing, shall come to a full and complete stop within fifty feet thereof and shall not pass over the crossing until it has been ascertained that it is safe so to do.

2. Said crossing shall be protected by derails, installed in tracks of Sacramento Northern Railway on both sides of the crossing, said derails to be operated by lever and pipe connection from a point near the crossing, which shall also operate signals on both sides of the crossing on the tracks of the Cement, Tolenas and Tidewater Railroad Company. Said derails and signals shall at all times be kept in good operating condition.

3. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-first day of April, 1928.

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DECISION NO. 19653.

COGGESHALL LAUNCH AND TOWBOAT COMPANY

vs.

COUSINS LAUNCH AND LIGHTER COMPANY, A COPARTNERSHIP COMPRISING WILLARD W. COUSINS, HENRY C. COUSINS, MRS. EDNA J. PHILLIPS AND DORIS E. BALDWIN.

Case No. 2380.

Decided April 21, 1928.

VESSELS.—Cousins Launch and Lighter Company directed to cease all common carrier operations between points on the Humboldt Bay.

VESSELS—COMMON CARRIER OPERATION.—Assuming contracts for the transportation of persons or property by vessel to be purely private in nature, when a carrier holds itself out as a common carrier between the same points, such contracts can not be lawfully exercised, as unjust discrimination would result against persons using the service as common carrier patrons and in favor of persons using the service as private contract holders (*Washington ex rel. Stimson Lumber Co.* vs. *Kuykendall*, U. S. 72. L. ed.____).

VESSELS—COMMON CARRIER OPERATION.—Should a common carrier, after authorization to cancel tariffs, continue to operate as a common carrier without securing authorization from the Commission, it is within the Commission's power to determine that such operations are public in nature and to order a cessation unless and until authorization is secured.

Pierce H. Ryan, for Complainant.
Puter and Quinn, by *L. F. Puter*, for Defendant.

BY THE COMMISSION.

OPINION.

Complainant has for many years been a common carrier by vessel on Humboldt Bay, operating chiefly between the points of Eureka and Samoa and between Eureka and Rolph (also known as Fairhaven). It alleges in its complaint that defendant is operating vessels illegally between the same points for the transportation of persons for compensation in competition with complainant and in violation of the latter's certificated rights. By its answer, defendant, in effect, admits the operations, but contends that it is doing so as a private, and not as a common carrier, and therefore not illegally. A public hearing was held before Examiner Vaughan at Eureka, the matter was duly submitted, and is now ready for decision.

The single question involved is whether or not defendant is a common carrier by vessel in conducting its operations between the above named points and the pertinent facts, in so far as they relate to this question, are as follows:

For several years the employees and property of the Little River Redwood Company, maintaining an industrial plant at Little River wharf, had been transported by defendant and its predecessors as common carriers between this point and Eureka. About 1926, the

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lumber company decided to move its plant and equipment from Little River wharf to the town of Rolph. Defendant filed an application (Application No. 13282) requesting authority to operate to and from Rolph, predicated upon its desire to continue the service theretofore rendered between Eureka and Little River wharf. By and under Decision No. 17978 the Commission denied this application. Subsequently, defendant filed its Application No. 13713, requesting authority to cancel all freight and passenger tariffs naming rates, fares, rules and regulations for the transportation of persons and property by it between points on Humboldt Bay. This Commission granted such authority (Decision No. 18331) upon the condition that it should not be considered as a determination of the character of the operations of defendant.

Immediately after the shifting of the lumber company plant to Rolph, complainant commenced operating on a daily schedule between that point and Eureka under rates and tariffs lawfully on file with this Commission. Pursuant to an arrangement between complainant and the lumber company the method of collecting rates and charges called for the transportation of the employees of the latter daily upon a monthly billing basis. On May 27, 1927, complainant received a letter from the lumber company, advising that prior instructions were rescinded and that henceforth the employees would be carried by defendant.

On May 31, 1927, a contract was entered into between the lumber company and defendant, whereby the latter agreed to transport the employees of the former, irrespective of number, for the stipulated sum of $100 per month. No deduction from the wages of employees is made by the lumber company for this transportation. The contract also provides for the transportation of lumber products from Rolph to other wharves owned or controlled by the lumber company to ships in Humboldt Bay at rates dependent upon tonnage and by whom loaded. Miscellaneous freight is agreed to be carried at the rate of $1.50 per ton.

A verbal contract practically identical in terms exists between defendant and the Dolbeer-Carson Lumber Company for a similar operation between Eureka and Samoa, this being the other violation of law alleged in the complaint.

The manager of defendant company testified that defendant was ready and willing, and considered itself under a duty to transport freight for any one to and from any points on Humboldt Bay at certain specified rates. He further testified that the company was willing and considered itself under a duty to carry at certain specified rates any persons who presented themselves for transportation to and from any point on Humboldt Bay.

From this showing, it is our conclusion that defendant is actually

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holding itself out as a common carrier, and furthermore, we believe that the record discloses that defendant has been acting as such. The only thing which might indicate otherwise is the existence of the two contracts above referred to, which defendant, relying upon the rule announced by the United States Supreme Court in *Frost and Frost* vs. *Railroad Commission* (271 U. S. 583) contends to be private in nature, therefore rendering all operations thereunder not subject to our jurisdiction.

As is above noted, these contracts call for operations between the point of Eureka on the one hand, and the points of Rolph and Samoa on the other. The record is conclusive that defendant also holds itself out as a common carrier between these same points. Assuming these contracts to be purely private in nature, we do not think they can be lawfully exercised for the obvious reason that unjust discriminations would result against persons using the services as common carrier patrons, and in favor of persons using the services as private contract holders. See *Washington ex rel. Stimson Lumber Co.* vs. *Kuykendall*, Advance Opinions of the United States Supreme Court, 1927–28, 50; 72 L. ed._____.

At the hearing defendant placed stress upon the fact that the Commission had permitted it to cancel its tariffs and that this was determinative of the character of its operations as being public or private. The answer to this is that the order authorizing such cancellation was upon the express condition that it should not be so considered. Furthermore, should a common carrier, after such authorization to abandon service, continue the same as a common carrier, as is being done here, without securing the proper and legally required authorization from this Commission, we believe it to be within our power to determine that such operations are public in nature and to order a cessation of same unless and until such authorization is secured.

From the foregoing, we hereby find that the operations of defendant as they are at present being conducted between Eureka and Rolph and Eureka and Samoa and other points on Humboldt Bay, are common carrier services which defendant has no lawful right to perform. An order will be entered directing defendant to immediately cease and desist from such common carrier operations.

ORDER.

A complaint, as above numbered and entitled, having been filed with this Commission, a public hearing having been held thereon, the matter having been duly submitted, and being now ready for decision; now, therefore,

It is hereby ordered, that defendant, Cousins Launch and Lighter Company, be and it is hereby ordered to immediately cease and desist

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from all common carrier operations between any and all points on the Humboldt Bay, in the State of California, including such operations as defendant is now, and has been, conducting for the Little River Redwood Company and the Dolbeer-Carson Lumber Company, as such operations are defined in the opinion preceding this order; unless and until a certificate of public convenience and necessity authorizing such operations is first had and obtained from this Commission.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-first day of April, 1928.

DECISION No. 19657.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES RAILWAY CORPORATION, A CORPORATION, FOR AN ORDER READJUSTING RATES AND ESTABLISHING JUST AND REASONABLE RATES FOR THE TRANSPORTATION OF PERSONS ON THE COMPANY'S LINES IN THE STATE OF CALIFORNIA.

Application No. 13323
Decided April 23, 1928.

REHEARING.—Application of Los Angeles Railway Corporation for rehearing of Decision No. 19521 (31 C. R. C. 383) denied.

VALUATION—ASCERTAINMENT OF VALUE—IN GENERAL.—In final analysis the matter of a rate base and its fixation upon the basis of diverse theories and conflicting testimony is a matter of judgment.

BY THE COMMISSION.

ORDER DENYING REHEARING.

Petition for a rehearing of our Decision No. 19521 herein was filed by applicant, Los Angeles Railway Corporation, on April 14, 1928. We have carefully considered this petition and each and every allegation thereof, and in our opinion no good cause for the granting of a rehearing is therein stated.

In this connection, we hereby declare that in reaching our conclusion as to a fair rate base figure in this proceeding we took into consideration all of the evidence and claims of value which are before us. Such a rate base figure is of value solely for the purpose of testing the reasonableness of the rates, and in arriving at our finding upon this item we gave particular attention and weight to the estimates of reproduction cost new, less depreciation, and we took into consideration and made what we believe to be fair allowance for claimed intangible elements of value, in the light of all the surrounding circumstances.

It is significant that, on this record, a fair allowance for reproduction cost new, less depreciation, would, with fair allowance for all intangible

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items, amount to a sum considerably less than the figure which we have found as a rate base. The testimony as to these items discloses wide variation in the several estimates, and in our opinion, not more than $36,350,000 could fairly be said to represent the basic figure of reproduction cost new, less depreciation. We have given what we believe to be a proper weight to this item.

In final analysis, the matter of a rate base and its fixation upon the basis of diverse theories and conflicting testimony is a matter of judgment, and after a careful consideration of the petition for rehearing above mentioned, and a reconsideration of the testimony adduced in this case, we are of the opinion that we must adhere to our former judgment and finding that the highest rate base which can reasonably be used for the purpose of computing a fair return on the operative property of this corporation is the sum of $42,000,000. In the light of the record before us in this proceeding, we are of the opinion that this finding is a most liberal one, and that it is the highest figure which may properly be used for the purpose of testing the fairness and reasonableness of the fares in force upon applicant's system;

It is therefore ordered, that the above mentioned petition for rehearing of Los Angeles Railway Corporation, applicant herein, be and the same is hereby denied.

Dated at San Francisco, California, this twenty-third day of April, 1928.

Decision No. 19660.

IN THE MATTER OF THE APPLICATION OF GEORGE A. BRAY AND H. G. TEALE, COPARTNERS, DOING BUSINESS AS THE MESMER CITY WATER COMPANY, AND OF THE MESMER CITY WATER COMPANY, INCORPORATED, A CORPORATION, FOR PERMISSION TO SELL AND ACQUIRE PUBLIC UTILITY PROPERTY, ISSUE STOCK, AND TO EXECUTE A MORTGAGE ON PUBLIC UTILITY PROPERTY.

Application No. 14476.

Decided April 23, 1928.

TRANSFER—SECURITY ISSUES.—G. A. Bray and H. G. Teale (Mesmer City Water Company) authorized to transfer water properties to Mesmer City Water Company, Incorporated, and the latter authorized to issue not exceeding $25,000 of common capital stock, and a note in the sum of $7,930.

SECURITY ISSUES—AMOUNT—OPERATING LOSSES.—The Commission has no authority to authorize the issue of stock against operating losses.

MORTGAGE.—Mortgages executed without authorization are void.

SECURITY ISSUES—AMOUNT—INDEBTEDNESS.—Indebtedness should be considered as part of the capitalization of a utility corporation, and upon the payment of such debt the issue of additional stock may be authorized.

Loris V. Cady, for Applicant.

BY THE COMMISSION.

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OPINION.

In this application, Mesmer City Water Company, a copartnership, composed of George A. Bray and H. G. Teale, ask permission to sell its public utility water properties to the Mesmer City Water Company, a corporation, and the corporation asks permission to buy such properties, to assume indebtedness and to issue such an amount of stock in payment for the properties as the Commission finds reasonable.

By Decision No. 15603, dated November 7, 1925, in Application No. 11536 (Volume 27, Opinions and Orders of the Railroad Commission of California, page 166), the Commission declared that public convenience and necessity require and will require that George A. Bray and H. G. Teale, copartners, operate a public utility for the purpose of supplying water for domestic and irrigation use to consumers within the district covered by Los Angeles County Ordinance No. 1298, new series, a copy of which ordinance was filed in that proceeding.

Under the authority granted they have proceeded with the installation of a water system and, according to the testimony, have expended up to December 31, 1927, $32,417.80 for that purpose.

The expenditures so incurred are segregated by applicants as follows:

Land	$5,100 00
Drilling wells	2,755 90
Pumps (two)	2,490 57
Cementing wells	150 00
Two redwood tanks	3,235 00
Painting tanks	568 53
Engineering and supervision	4,900 00
Lumber	64 17
Water mains and lines	12,725 33
Meters and meter boxes	428 30
Total	$32,417 80

The accrued depreciation is reported at $2,350.40. In addition to the above expenditures applicants report an expenditure of $1,045.60 for franchises and $1,935.94 for organization purposes. It is also alleged that the business has a good will value of $15,000. Mr. H. G. Teale testified that such amount in reality represented amounts which the copartnership has had to advance and which will have to be advanced to cover operating losses. In our opinion, we have no authority under the provisions of the Public Utilities Act to authorize the issue of stock against operating losses.

The Mesmer City Water Company, Inc., was organized on or about May 27, 1926, with an authorized capital stock of $200,000 divided into 2000 shares of the par value of $100 each. The corporation intends to acquire the public utility properties of the copartnership mentioned. The real property consists of lot 88 in Tract 6051, and lot 172 in Tract 8539. The personal property consists of all water lines and mains, pumping equipment, pumps, wells, tanks, meters, meter boxes,

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accounts, accounts collectible and all other personal property of the Mesmer City Water Company, a copartnership, composed of George A. Bray and H. G. Teale.

The Mesmer City Water Company, Inc., in its application, as amended at the hearing, asks permission to execute a mortgage to secure the payment of the sum of $7,930 to refund an indebtedness of a like amount secured by two mortgages executed by the copartnership. The execution of the mortgages by the copartnership was not authorized by the Commission, and we therefore conclude that such mortgages are void. The testimony shows that the money obtained through the execution of the mortgages was used to pay part of the cost of installing the water system. The mortgage which the corporation asks permission to execute is to secure the payment of a three-year 7 per cent note in the amount of $7,930. A copy of such mortgage is filed in this proceeding as Exhibit J-2 and is in satisfactory form, except that the interest rate should be changed from 8 to 7 per cent.

Applicant, Mesmer City Water Company, Inc., asked permission to issue stock against the reasonable value of the properties without any deduction being made therefrom for the indebtedness of $7,930. We believe that such indebtedness should be considered as part of the capitalization of the corporation. Upon the payment of the debt, consideration will, upon request of applicant, Mesmer City Water Company, Inc., be given to the issue of additional stock because of such payment.

We have considered the testimony submitted in this proceeding and believe that the Mesmer City Water Company, Inc., should be permitted to issue a note for $7,930 payable on or before three years after date, with interest at the rate of 7 per cent per annum, and to secure the payment of such note by the execution of a mortgage and to issue not exceeding $25,000 par value of its common capital stock, in payment for the properties which the Mesmer City Water Company, a copartnership, intends to tranfer to the corporation.

ORDER.

Mesmer City Water Company, a copartnership, composed of George A. Bray and H. G. Teale, having asked permission to transfer public utility water properties to the Mesmer City Water Company, Inc., and said corporation having asked permission to purchase said properties and issue stock and notes and execute a mortgage, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for by the issue of the $25,000 of stock and $7,930 of notes herein authorized, is reasonably required by applicant, Mesmer City Water Company, Inc., and that the expenditures herein author-

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ized are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted, as herein provided; therefore,

It is hereby ordered, as follows:

1. Mesmer City Water Company, a copartnership, composed of George A. Bray and H. G. Teale, be and it is hereby authorized to sell the properties described in Exhibit J-1 and Exhibit J-2 to the Mesmer City Water Company, Inc., and said Mesmer City Water Company, Inc., is hereby authorized to acquire said properties and operate the same.

2. Mesmer City Water Company, Inc., is hereby authorized to issue a note for the principal sum of $7,930 payable on or before three years after date, with interest at the rate of 7 per cent and not exceeding $25,000 of its common capital stock in payment for the properties which it is hereby authorized to purchase.

3. Mesmer City Water Company, Inc., is hereby authorized to execute a mortgage substantially in the same form as the mortgage filed in this proceeding as Exhibit J-3, provided that such mortgage be modified so as to obligate the Mesmer City Water Company to pay interest at the rate of 7, instead of 8 per cent, on said note; and provided, further, that the authority herein granted to execute said mortgage is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

4. The authority herein granted will become effective when Mesmer City Water Company, Inc., has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

5. Mesmer City Water Company, Inc., shall keep such record of the issue, sale and delivery of the notes and stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

6. The authority herein granted to transfer properties and issue stock and notes will expire on August 1, 1928.

7. Mesmer City Water Company shall file with the Railroad Commission within thirty days after acquiring the properties herein authorized, a statement showing the date on which it acquired such properties and the date on which it took possession of same.

Dated at San Francisco, California, this twenty-third day of April, 1928.

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DECISION NO. 19661.

CALIFORNIA HAWAIIAN MILLING COMPANY, INCORPORATED, A CORPORATION,

vs.

SOUTHERN PACIFIC COMPANY, A CORPORATION

Case No. 2466.

Decided April 23, 1928.

RATES—RAILROAD.—Southern Pacific Company ordered to desist from collecting charges on grain milled in transit at San Francisco prejudicial in favor of Oakland. Reparation denied.

DISCRIMINATION—RAILROADS—MILLING IN TRANSIT.—The mere fact that one point is located in proximity to another point is not a deciding factor of the milling in transit privileges applicable at the latter point, when such point is not intermediate.

REPARATION—CIRCUMSTANCES DETERMINING RIGHT—DISCRIMINATION.—On a finding of prejudice or discrimination, reparation will be denied in the absence of proof of damage suffered.

C. R. Schulz and Max B. Schulz, by *C. R. Schulz*, for California Hawaiian Milling Company, Complainant; and for San Francisco Milling Company, George H. Croley Company and Consolidated Milling Company, Interveners.
James E. Lyons, for Southern Pacific Company, Defendant.
R. P. McCarthy, for Globe Grain and Milling Company.
E. B. Smith, for Sperry Flour Company.
C. S. Connolly, for Albers Bros. Milling Company.
Platt Kent, E. C. Pierre and *Berne Levy*, for The Atchison, Topeka and Santa Fe Railway Company.

BY THE COMMISSION.

OPINION.

Complainant is a corporation organized under the laws of the State of California with its principal place of business at San Francisco and is engaged in the buying, selling and manufacture of grain, hay and products thereof. By complaint filed December 20, 1927, it is alleged that the rates assessed and collected by defendant on various carload shipments of grain moved during the period two years immediately prior to the filing of this complaint from Stockton, Lathrop, Tracy and points south thereof to points on the Northwestern Pacific Railroad Company and milled in transit at San Francisco were in excess of the legally published tariff rates, in violation of section 17 of the Public Utilities Act; that the according of milling in transit of grain at Oakland from and to the same territory without any out-of-line or back haul charge for such transit privilege while denying the same at San Francisco is unduly discriminatory and prejudicial to San Francisco and preferential to Oakland in violation of section 19 of the Public Utilities Act.

We are asked to find as to the legally applicable rates, award reparation and remove the preference and discrimination alleged to exist.

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A public hearing was held March 15, 1928, before Examiner Geary, and the case having been duly heard and submitted is now ready for our opinion and order.

Complainant ships grain from Stockton, Lathrop, Tracy and points south thereof to San Francisco, where it is there manufactured and the finished product shipped to points on the northwestern Pacific in competition with plants located at Oakland, South Vallejo and other points in California.

Paragraph G of item 1400 of Southern Pacific Terminal Tariff 230-J, C. R. C. 3183, provides on this traffic that Oakland will be considered as an intermediate point between point of origin and destination and as a consequence no out-of-line or back haul charge applies when the grain is milled at Oakland, while at San Francisco there is no such specific tariff provision and complainant has paid 2 cents per 100 pounds out-of-line or back haul charge on its grain milled in transit at the latter point.

Complainant avers that by reason of the provisions of item 1400, paragraph F, the mileage via Oakland by the greatest distant route authorized by the tariff would be in excess of the shortest possible mileage through San Francisco, but the tariff provides that the through rate on a milling in transit movement is only applicable at points which are intermediate in the movement of the tonnage through the transit point and San Francisco is not intermediate between the points in the San Joaquin Valley and the points located on the Northwestern Pacific when the shipments move through Oakland. To construe paragraph F of item 1400 as authorizing the use of distances via a possible route in which the defendant participates from point of origin to destination in determining charges would result in most incongruous situations. The mere fact that Oakland is located in close proximity to San Francisco is not a deciding factor of the milling in transit privileges applicable at the latter point. The interpretation of the tariff as contended for would be an unreasonable one, for there is no tariff authorizing the use of absolute distances to and from Oakland as compared with San Francisco in determining the out-of line or back haul charges applicable on the grain milled in transit at San Francisco.

There remains for consideration the question of undue preference and prejudice alleged to exist by the permitting of milling in transit at Oakland without any out-of-line or back haul charge while denying the same privilege at San Francisco. In *George H. Croley Company, Inc.*, vs. *Atchison, Topeka and Santa Fe*, Case 2474, similar allegations are made as to rates via the Santa Fe and it was stipulated at the hearing that a single report should dispose of this issue. It will therefore be unnecessary to here reiterate in detail the evidence sub-

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mitted on this question for in many respects substantially the same conditions exist in connection with traffic moving via the Southern Pacific as that moving via the Santa Fe.

After consideration of all the facts of record and the matters and things involved we are of the opinion and so find that the defendant has not violated section 17 of the Public Utilities Act in declining to consider the distances to and from Oakland in determining, if any, the out-of-line or back haul charge applicable on grain originating at Stockton, Lathrop, Tracy and points south thereof, milled in transit at San Francisco and destined points on the Northwestern Pacific. We are of the further opinoin that the permitting of milling in transit at Oakland from and to the territory here involved without any out-of line or back haul charge while denying similar privileges at San Francisco was unduly preferential to Oakland and unduly prejudicial to San Francisco in violation of section 19 of the Public Utilities Act.

No proof of damage suffered, as is required to be made on a finding of prejudice or discrimination, is of record, and reparation is therefore denied. *Penn. R. R. Co.* vs. *International Coal Company,* 230 U. S. 184, *Los Angeles County* vs. *Pacific Electric et al.,* 27 C. R. C. 337, 28 C. R. C. 143.

ORDER.

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof; it having been found in said opinion that the charges assailed, which were collected by defendant for back haul or out-of-line services to and from San Francisco in connection with the transportation of grain, carloads, milled in transit at San Francisco and reshipped to points on the northwestern Pacific Railroad are unduly prejudicial to San Francisco and unduly preferential to Oakland to the extent they exceed charges for back haul or out-of-line haul services contemporaneously maintained by defendant on like traffic milled at Oakland;

It is hereby ordered, that defendant, Southern Pacific Company, be and it is hereby notified and required to cease and desist on or before forty-five days from the date of this order, and thereafter to abstain from practicing the undue preference referred to in the next preceding paragraph hereof.

It is hereby further ordered, that said defendant be and it is hereby notified and required to establish on or before forty-five days from the date of this order, upon notice to this Commission and the general public by not less than five days' filing and posting in the manner

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required by law, and thereafter to maintain and apply rates, charges, regulations and practices which will prevent and avoid the aforesaid undue prejudice and preference.

It is hereby further ordered, that as to all other matters the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this twenty-third day of April, 1928.

DECISION No. 19664.

IN THE MATTER OF THE INVESTIGATION UPON THE COMMISSION'S OWN MOTION INTO THE OPERATIONS, SERVICE AND RATES OF ELMER E. FROST AND COMPANY, DOING BUSINESS EITHER UNDER THE NAME OF FROST FAST FREIGHT SERVICE, OR OTHERWISE, IN THE TRANSPORTATION OF FREIGHT OR EXPRESS MATTER BETWEEN THE TERMINI OF LOS ANGELES AND SAN DIEGO.

Case No. 2519.

Decided April 23, 1928.

EXPRESS CORPORATION.—E. E. Frost and Company (Frost Fast Freight Service) found to be a common carrier express corporation, and directed to file express tariffs for service between Los Angeles and San Diego.

PUBLIC UTILITIES—WHAT CONSTITUTES—EXPRESS CORPORATION.—A company rendering a store door pick up and store door delivery service for the transportation of freight between two cities, consolidating individual packages into one shipment moving by railroad at tariff rates, is an express corporation within the meaning of section 2 (*k*) of the Public Utilities Act.

PUBLIC UTILITIES—WHAT CONSTITUTES—EXPRESS CORPORATION.—Whether a rail carrier performs service for an express corporation under contract or at the regular tariff rates is not material to the determination of the status of the latter under section 2 (*k*) of the Public Utilities Act.

Richard T. Eddy, for the Frost Fast Freight Service.
H. J. Bischoff and *R. E. McConnell*, for the Boulevard Express and Coast Truck Line.
S. P. Cowen, Intervener.
E. W. Camp and *Berne Levy*, for The Atchison, Topeka and Santa Fe Railway Company.
L. B. Young, for the Pacific Electric Railway Company.

CARR, *Commissioner.*

OPINION.

This is a proceeding instituted by the Commission on its own motion to determine whether or not the operations of Elmer E. Frost and Company, doing business under the name of Frost Fast Freight Service in the transportation of freight between the termini of Los Angeles and San Diego, are conducted as a common carrier express corporation under section 2 (*k*) of the Public Utilities Act and therefore under the jurisdiction of this Commission. A public hearing was held at Los Angeles on April 6, 1928.

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The facts relating to the operations of respondents are not in dispute. Elmer E. Frost and Company is a copartnership consisting of Elmer E. Frost and Ina M. Frost. Approximately two months ago respondents inaugurated and extensively advertised to the shipping public what they term a "store door pick up and store door delivery service" for the transportation of freight between Los Angeles and San Diego. This service so far has only been rendered south bound from Los Angeles to San Diego and only on certain selected commodities capable of relatively heavy loading, respondents apparently preferring not to handle more bulky articles such as unerated furniture. The shipments are picked up from individual shippers at their respective places of business in Los Angeles by the trucks of the Commercial Transfer Company, the latter, under contract, delivering the shipments to respondents' receiving station leased from and located in the freight sheds of The Atchison, Topeka and Santa Fe Railway Company, hereafter referred to as the Santa Fe. Here the individual packages are consolidated into one shipment, are tendered to the Santa Fe by respondents as consignors, and are thence transported over that railroad to San Diego, either as less than carload freight in trap cars or as carload shipments, depending on the size and nature of the consignments. The lawfully established rates of the Santa Fe contained in tariffs on file with this Commission are assessed. The consolidated shipments are all consigned to the C. and R. Transfer Company at San Diego, and the latter, after taking delivery on the team tracks of the Santa Fe, performs for respondents under contract the store door delivery services at destination. For the complete services respondents maintain and assess on shipments weighing less than 1000 pounds a rate of 70 cents per 100 pounds for articles rated first class, 65 cents per 100 pounds for those rated second class, 55 cents per 100 pounds for those rated third class, and 50 cents per 100 pounds for those rated fourth class. Lower class or commodity rates are established on shipments weighing over 1000 pounds. Until April 2, 1928, the articles were rated according to the Consolidated Freight Classification No. 5, C. R. C. No. 412, and since that date according to Monroe's "Ship-by-Truck" Freight Classification C. R. C. No. 5. Out of the total freight charges received by respondents they pay the Santa Fe its lawful freight rates and the charges of the draying concerns for rendering the pick up and delivery services.

Effective April 2, 1928, respondents filed, under protest, with this Commission Tariff C. R. C. No. 2, alleging that they did this solely because of the issuance of a temporary injunction by the superior court of the State of California in and for the county of Los Angeles, which restrained respondents from performing the freight services in question unless and until a tariff covering the operations should have been filed

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and published in accordance with the provisions of the Public Utilities Act.

Section 2 (*k*) of the Public Utilities Act defines an express corporation as follows:

> The term "express corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state.

Respondents contend, in effect, that they are solely shippers of goods from Los Angeles to San Diego and are not in any sense actually transporting any freight, that service being performed by the Santa Fe, the shipments moving in Santa Fe equipment and in complete custody of that company from the time they leave Los Angeles until they arrive at San Diego. In support of this contention they rely upon the fact that they pay the regular tariff rates of the Santa Fe and have no contract with that company such as usually exists between a railroad and an express corporation. The record, however, shows conclusively that the operations of respondents go beyond those of a mere shipper. In a circular distributed to shippers in Los Angeles and San Diego (Exhibit No. 2) respondents describe their services in part as follows:

> Inasmuch as our Los Angeles-San Francisco store door pick-up and delivery service has won such high favor among shippers of those two cities, we are pleased to announce an extension of this service to include San Diego and its environs. Rapid through carriage of heavier merchandise shipments, as well as package service—at rates comparable to the current drayage-transportation line rates—is the controlling feature of this new service.
>
> This service offers and guarantees "No Shut-outs." Freight received at our terminal as late as 6 p.m. is insured positive delivery in San Diego not later than 10 a.m. the following morning.
>
> Our representative will be privileged to furnish you with rate schedules, or to answer any question regarding this practical solution of your transportation problems.
>
> * * * * * * *
>
> *Transportation is not ended until consignee is in possession of merchandise.* (Italics ours.)

Respondents thus hold themselves out, and the testimony shows they are engaged in transporting freight through the agencies of other carriers and giving a completed transportation service which commences when the shipments are picked up from the consignors at Los Angeles and ends only when they are finally delivered to the consignees at San Diego. Under the statutory provision here in question, the arrangement between respondents and the Santa Fe for performing the rail service, whether under contract or at the regular tariff rates, is not material to the determination of respondents' status in this proceeding.

After a careful consideration of all the facts of record, I am of the opinion and so find that the service rendered by these respondents to the shipping public is that of a common carrier express corporation within the meaning of section 2 (*k*) of the Public Utilities Act.

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Respondents' Tariff C. R. C. No. 2 now on file with the Commission does not in all respects conform to the rules and regulations governing the construction and filing of express tariffs, and respondents will therefore be required to file a new and complete tariff.

I recommend the following form of order:

ORDER.

This proceeding having been duly heard, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that respondents, Elmer E. Frost and Ina M. Frost, doing business as a copartnership under the name of the Frost Fast Freight Service, be and they are hereby directed to establish within thirty days from the date of this order a complete and comprehensive express tariff superseding their heretofore filed Tariff C. R. C. No. 2, and containing the rates, rules and regulations of this copartnership governing the transportation of express matter between Los Angeles and San Diego, such tariff to be constructed under the provisions of Commission Tariff Circular No. 2.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-third day of April, 1928.

DECISION NO. 19667.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES GAS AND ELECTRIC CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE AND USE FOR SINKING FUND PURPOSES OF FOUR HUNDRED EIGHTY-ONE THOUSAND DOLLARS PAR VALUE OF ITS SERIES "J" BONDS.

Application No. 14539.

Decided April 25, 1928.

SECURITY ISSUES—BONDS.—Los Angeles Gas and Electric Corporation authorized to issue $481,000 of its Series "J" general and refunding mortgage bonds and to deposit such bonds in sinking fund.

Paul Overton, for Applicant.

BY THE COMMISSION.

OPINION.

Los Angeles Gas and Electric Corporation asks the Railroad Commission to make an order authorizing it to issue $481,000 of its Series "J" general and refunding mortgage 5 per cent bonds dated May 1, 1927, and due May 1, 1950, and to deliver the same to Security Trust

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and Savings Bank, trustee, under its trust indenture of March 1, 1921, for the purpose of depositing them in the sinking fund created thereunder. The company's general and refunding mortgage dated March 1, 1921, requires it on May 1, 1922, and annually thereafter on the first day of May in each year, so long as any of the bonds remain outstanding and unpaid, to pay to Security Trust and Savings Bank, one of the trustees under such mortgage, as a sinking fund, a sum in cash equal to 1¾ per cent of the par value of the aggregate bonded indebtedness of the company outstanding on the fifteenth day of March of the year in which such payment shall become due, less the amount of cash paid and/or the aggregate par value of all bonds deposited in the sinking fund of the underlying mortgages during the immediate preceding twelve months. In lieu of cash the company may deliver to the trustee for sinking fund purposes at the par value thereof, bonds secured by the general and refunding mortgage. All bonds so delivered for sinking fund purposes shall be canceled forthwith by the trustee and delivered to the company.

It is now reported (Exhibit I) that under and pursuant to the provisions of the general and refunding mortgage the company will be required on May 1, 1928, to pay to Security Trust and Savings Bank as trustee, as a sinking fund, the sum of $481,265, or in lieu thereof, bonds secured by said indenture at their par value. Accordingly it desires to deposit with the trustee $481,000 face value of its Series "J" bonds in lieu of an equal amount of cash and to pay to the trustee in addition in cash, the sum of $265. It therefore makes this request for authority to issue the $481,000 of bonds.

In support of this request, the company alleges that between August 1, 1926, and December 31, 1926, as shown in Exhibit "B," it expended for permanent extensions and additions the net sum of $3,063,556.50 of which it has heretofore used $750,666.67 as the basis for the issuance of $563,000 of bonds heretofore authorized by the Commission in Decision No. 18283, dated April 27, 1927, leaving a balance not heretofore used as a basis for the issue of bonds of $2,312,889.83, against which it now proposes to have the trustee under the general and refunding mortgage certify the additional $481,000 of bonds. Applicant has filed a statement in which it reports that from August 1, 1926, to May 1, 1928, it has expended or will expend for additions and betterments $10,944,057.57. This includes an estimated expenditure of $593,583.87 for April, 1928. From the $10,944,057.57 applicant deducts the proceeds realized from the sale of stocks and bonds, the issue of which the Commission has heretofore authorized and likewise the $750,666.67 of expenditures used to have the $563,000 of bonds mentioned above certified. After making such deductions applicant reports construction expenditures of $2,376,725.72 not used as the

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basis of the issue of either stock or bonds. It is our opinion that the ratio of applicant's bonded indebtedness to its reported investment in its properties, its uncapitalized construction expenditures, its financial conditions and the prices at which its bonds are selling, warrants the granting of this request.

ORDER.

Los Angeles Gas and Electric Corporation having applied to the Railroad Commission for permission to issue $481,000 of bonds, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for through such issue of bonds is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Los Angeles Gas and Electric Corporation be and it hereby is authorized to issue at not less than face value $481,000 of its Series "J" general and refunding mortgage bonds due May 1, 1950, for the purpose of financing in part the construction expenditures, referred to in the opinion which precedes this order, and to deposit such bonds in the sinking fund created under and pursuant to its trust indenture dated March 1, 1921.

The authority herein granted is subject to the following conditions:

1. Applicant shall keep such record of the issue of the bonds herein authorized as will enable it to file on or before thirty days after such issue a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

2. The authority herein granted will become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $481.

Dated at San Francisco, California, this twenty-fifth day of April, 1928.

DECISION No. 19678.

IN THE MATTER OF THE APPLICATION OF HOBART ESTATE COMPANY, A CORPORATION, AND EMMA ROSE, FOR LEAVE TO DISCONTINUE THE SERVICE OF WATER FOR IRRIGATION, MINING AND DOMESTIC USE IN THE COUNTY OF CALAVERAS, STATE OF CALIFORNIA.

Application No. 13180.

Decided April 26, 1928.

SERVICE—ABANDONMENT.—Application of Hobart Estate Company (Utica Mining Company) to abandon irrigation service denied.

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SERVICE—ABANDONMENT—OPERATION AT A LOSS.—Authorization to abandon irrigation service was denied where applicant had burdened water properties with operating expenses of its power plant, and where the return would have been greater had not the utility deliberately discouraged the use of water for irrigation.

APPORTIONMENT—WATER AND MINING.—The cost of maintaining an office in another city as a convenience to a utility's mining interests, and not necessary to public utility operations, is not properly chargeable against local water operations.

SERVICE—ABANDONMENT—IN GENERAL.—Until a utility has shown an endeavor to perform an adequate and reasonable service and to expand such service in the territory it is obligated to supply at reasonable rates, it should not be permitted to discontinue its public utility duties.

McCutchen, Olney, Mannon and Greene, by *Allen P. Mathew*, and *John T. Piggott*, for Applicants.
Edward Van Vranken, for San Joaquin County, Protestant.
J. W. Coleberd, for San Francisco County Loan Company.
Virgil M. Airola, Rowan Hardin and *Frank Folletti*, for Protestants.

LOUTTIT, *Commissioner*.

OPINION.

This is an application for authority to discontinue irrigation service, filed by Hobart Estate Company, a corporation, and Emma Rose, who are the owners as tenants in common of certain properties operated under the firm name and style of Utica Mining Company and engaged, among other things, in the sale and distribution of water for domestic, mining and irrigation purposes, and also in the generation of electric energy for general use in and in the vicinity of Murphys, Douglas Flat, Vallecito, Carson Hill, Altaville and Angels Camp, in Calaveras County. The application alleges in effect that for many years last past the expenses necessarily incurred by applicant in furnishing water for irrigation and purposes other than domestic service in the town of Angels Camp have been and now are greatly in excess of the gross revenue received; that a rate sufficient to make said service compensatory would be prohibitive; that such water service outside of Angels Camp is not public utility in character but has always been and now is incidental and a mere accommodation to the consumers. Wherefore, applicants ask that, in the event the Railroad Commission should consider the water service outside of the town of Angels Camp to be a public utility service, said Commission authorize applicants to discontinue such service, saving and excepting the furnishing of water for domestic purposes to the inhabitants of the town of Angels Camp.

Public hearings in this matter were held in Angels Camp after all interested parties had been duly notified and given an opportunity to appear and be heard.

For a history and description of this system, reference is hereby made to our Decision No. 19639, issued in connection with Case No. 2266, *Williams et al.* vs. *Utica Mining Company*.

The evidence shows that in 1926 this company supplied 134 consumers with water for domestic, irrigation and mining purposes outside of its

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municipal system in Angels Camp, which supplied approximately 314 consumers. The rates in effect for ditch service for irrigation and mining purposes are 20 cents per miner's inch day of twenty-four hours above Pipe Reservoir and 15 cents per inch below. The miner's inch being equivalent to 1/40 of a cubic foot per second, these charges for all practical purposes are equivalent to $4 and $3, respectively, per acre-foot. Rates for domestic service outside of Angeles Camp range from $1 to $3 per month, according to use of water. These rates have been in effect for a great many years and were never established by the Railroad Commission.

A few months prior to the filing of the application herein, certain consumers of this utility filed formal complaint with the Commission alleging, among other things, that the said Utica Mining Company had arbitrarily diminshed and curtailed the deliveries of water for irrigation and domestic purposes outside of Angels Camp; had rendered inadequate and interrupted service and for several years last past had indulged in unfair discrimination against many of the consumers. This matter was entitled *H. P. Williams et al., Complainants*, vs. *Utica Mining Company, a copartnership, et al., Defendants*, and designated Case No. 2266. By stipulation, it was agreed by all interested parties that this case be combined with the instant proceeding for hearing only and that all evidence so received may be considered in either matter in so far as germane.

Formal protest against the granting of applicants' request to discontinue water service was filed by the county of San Joaquin, alleging in effect that said county owns jointly with the county of Calaveras a tract of land comprising seventy-one acres adjoining the townsite of Murphys; that said county of San Joaquin is the owner of ninety-nine per cent interest in a joint tuberculosis sanatorium now in course of construction on said tract at an estimated cost of two hundred thousand dollars; that water for domestic and irrigation purposes is absolutely necessary for the operation of said sanatorium and that the only available adequate supply is from the system of the Utica Mining Company, for which water service application has already been made to said company. The Calaveras Water Users Association, an organization representing all of the domestic and irrigation water users outside of Angels Camp, also appeared in opposition to the application.

Although applicants alleged in their petition that the service which they now wish to discontinue is not public utility in character, they receded from this contention during the hearings held herein, at least to the extent that they now state that they will not resist a finding by this Commission to the effect that the service is in fact public utility in character. In view of the somewhat indefinite nature of this concession on the part of applicants, it should perhaps be stated at this time that

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the evidence clearly shows that the entire water supply of the Union Water Company was dedicated to the public use in the late fifties principally for mining purposes, but also for irrigation, domestic, commercial, water power and industrial purposes and has been continuously so devoted to the public use, at least as to those waters discharged from the tail race of the Murphys power plant subsequent to the commencement of its operation on or about the year 1898. In this connection, it should also be noted that in several instances in proceedings before courts of record said applicants have recited and alleged in their pleadings therein that this same service of water rendered for irrigation, domestic, mining and other purposes, now before this Commission was a public utility service.

The evidence in this matter discloses the following facts: This ditch system was originally designed for delivering water for placer mining purposes in Calaveras County. With the decline of this type of mining and the advent of quartz mining, a large part of the water supply was devoted to this latter class of service. In recent years, the system was rearranged to generate electricity through the Murphys power plant, constructed in 1898, and all waters were run through this plant before delivery for other purposes. This change resulted in several irrigation water users being required to obtain water deliveries from other ditches and in certain instances the consumers, themselves, were forced to pay the costs of constructing new canals and ditches to procure service, although the relocations were required for the sole convenience of the utility. During the entire operation of the ditch system, water was delivered for agricultural irrigation, domestic, water power and industrial purposes generally throughout the area covered by the distribution canals. In more recent years and until the construction of the second power plant at Angels Camp in 1920, no restrictions were ever placed upon the amount of water delivered for any and all purposes, nor was service refused to any who properly applied therefor.

With the possible exception of the past two or three years, the records of water deliveries and actual acreage served are fragmentary, incomplete and unreliable. No actual water measurements were ever made until very recently; the amounts of deliveries were estimated through observation only by the superintendent of the distribution ditches, and, in practically all cases, the only entries made in any of the company's records consisted of the total charge made against the consumer. The evidence presented by applicants purporting to show the actual deliveries in miner's inches to the users for various years prior to 1923 is derived by applying the rate per miner's inch to the total of the bills. It is obvious that, in any attempt to determine a definite volume of water allocated in any specific period in the past to irrigation and domestic service in the area outside of Angels Camp.

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great weight can not reasonably be given to such figures. This is especially true in view of the testimony of all irrigation water users, which unanimously and conclusively shows that all such users received very much in excess of the amounts they would have obtained under actual measurement and that, when recent attempts were made by the company to deliver water by accurate wier measurements in the exact amounts determined by the above mentioned computations, the volume of deliveries was so much less than formerly received that, in practically all instances, the consumers were either forced to reduce their acreage or were unable to mature their crops. The evidence is clear that at least since the season of 1923, the company has failed to deliver sufficient water for the then existing consumers, has refused to allow additional water for increased acreage and has also refused to supply new consumers with water for irrigation purposes. Under such a fixed policy of discouragement, it is obvious that this class of service has been prevented by applicants' own acts from proper development and from earning increased revenues.

The evidence shows that a greater area than that now irrigated at some time in the past received water for irrigation uses, and that at the present time there are approximately 400 acres of land irrigated. However, the evidence conclusively indicates that a considerably greater acreage would have been under irrigation at the present time had the utility been willing to furnish a dependable supply instead of gradually withdrawing the water formerly available for this service and diverting it for foreign purposes in power development at the Angels power plant. It may therefore reasonably be said that this utility has dedicated its water supply to the general public in the territory covered by its distribution system.

Based upon the deliveries of water during 1926, all water was used once for power purposes; thereafter the waters were distributed between the Angels power plant, Angels domestic and irrigation and other service outside of Angels Camp. The percentage of water deliveries in 1926, which may be taken as a fair indication of operating conditions and methods, is as follows:

Power	98.48 per cent
Outside of Angels Camp	1.27 per cent
Angels Camp	0.25 per cent
Total	100.00 per cent

Bearing the above percentages in mind, it is interesting to note the segregation of operating expenses submitted by applicants in support of their allegations that the irrigation service is being conducted at a loss:

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TABLE I

	1921	1922	1923	1924	1925	1926
Revenues, electric	$119,943	$88,805	$74,944	$79,566	$60,526	$91,018
Expenses, electric	51,558	44,043	42,414	40,491	51,053	49,175
Net revenue, electric	$68,385	$44,762	$32,530	$39,075	$9,473	$41,843
Revenues, water:						
Angels domestic	------	$7,614	$7,320	$7,650	$7,441	$7,942
Outside Angels	------	3,087	2,536	2,626	2,898	2,676
Total water revenues	$10,729	$10,701	$9,856	$10,276	$10,339	$10,618
Combined water expenses	38,901	41,834	37,362	44,230	37,484	47,281
Net revenue, water	$28,172*	$31,133*	$27,506*	$33,954*	$27,145*	$36,663*
Net revenues, combined electric and water	$40,213	$13,629	$5,024	$5,121	$17,672*	$5,180

* Deficit.

The following figures are taken from the annual reports of the Utica Mining Company filed with the Commission and show a considerable variance with the corresponding figures in Table I compiled from exhibits filed by applicants:

TABLE II

	Water service outside Angels Camp	Angels Camp, domestic	Combined water operations	Electric operations	Combined operations
Year 1925:					
Revenues	$2,088	$8,254	$10,342	$61,211	$71,553
Expenses	-----	-----	41,897*	40,545	82,442
Misc. expenses	-----	-----	-------	-------	608
Net operating revenue	-----	-----	$31,555†	$20,666	$11,497†
Year 1926:					
Revenues	$1,937	$8,681	$10,618	$91,018	$101,636
Expenses	-----	-----	15,688*	80,624	96,312
Misc. expenses	-----	-----	-------	-------	143
Net operating revenue	-----	-----	$5,141†	$10,322	$5,181

* Operating costs combined.
†Deficit.

Analysis of the evidence presented in connection with the revenues and expenses shows that applicants have attempted to burden the water properties with the major portion of the costs of diverting, storing and transmitting water to the Murphys and Angels power plants. This is well illustrated by applicants' Exhibit No. 15, summarized in part in Table I, *supra*, wherein all maintenance and operating expenses on the Utica conduit, amounting to $8,672 in 1925, and $18,389 in 1926, and for the Angels ditch system, including the Ross and Pipe reservoirs, $6,850 in 1925, and $2,816 in 1926, were charged solely and entirely against the water system. None of the costs incurred in connection with the above conduit and ditch system, although necessary to the operation of the power plants, were charged against electric operations. The extent to which Angels ditch is used for irrigation purposes is shown by the revenues received therefor amounting to $107 in 1925, and $92 in 1926. The present method is to operate the system principally and primarily for the generation of power, and all waters are first run through the Murphys plant before diversion and use for other purposes. Of the waters passing the Murphys plant, only an insignificant portion thereof is ever used for irrigation purposes. It

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is clear that but a small, if any, part of the costs of constructing, operating and maintaining the properties is properly chargeable against the water users.

The allocation of taxes for combined water and electric operations for the year 1926 is typical of applicants' tax segregation for the preceding five years.

TAXES 1926

	Electric	*Water*
U. S. Department of Agriculture reservoir tax		$794 00
U. S. Forestry Service camp site tax		10 00
State electric gross revenue tax (King tax bill)	$4,268 59	
State water franchise tax		280 00
Water rights—Tuolumne County		192 14
Reservoirs—Alpine County		2,113 47
Calaveras County taxes:		
Utica conduit		1,528 56
Houses, pipe lines, etc., at Murphys		16 09
Portions of Angels, Union and North ditches		537 00
Portion of Angels ditch to Ross reservoir		298 74
Ross, Lane and Pipe reservoirs		360 93
Ditches and pipe lines and Angels Camp distribution system within Angels Camp		227 50
Gold Cliff ditch and other ditches and pipe lines outside of Angels Camp		212 30
South ditch system		40 59
Personal property, office, stable and shops		*372 31
Miscellaneous items		1 60
Total	$4,268 59	$6,985 23

* Allocated to general expense.

From the above segregation, it will be seen that the bulk of these taxes is solely for that part of the system developed for and devoted to the generation of power. Although the combined domestic and irrigation demands have received the benefit of only a very small percentage of the total use of the waters, yet there is charged against the water service for 1926 approximately 62 per cent of all taxes paid for said year for both water and electricity. As to the federal assessments for reservoirs and camp-site purposes and the water right taxes assessed by Tuolumne County and the reservoir taxes charged by Alpine County, as well as the tax assessed upon the Utica conduit, it is clear that a very small, if any, part thereof, amounting to $4,618.17, can in any reasonable manner be properly chargeable against water service. The same is true of the taxes assessed against the Ross, Lane and Pipe reservoirs, Angels ditch and the personal property taxes, except to the extent such items are used for water and irrigation purposes as compared with their joint use in certain instances for hydro-electric power generation at the Angels power plant. Applicants claim that, under the gross revenue tax on electric corporations, such tax is in lieu of all other taxes, and, for that reason, all other taxes paid should be allocated as expense of furnishing the water service. In this regard, it may be stated that the above provision does not include federal taxes of any nature whatsoever, and, as to county taxes, it is very clear that the amounts charged against the water utility's properties are entirely out of line with the taxes assessed against the

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electric properties. The annual reports filed by this company show that the fixed capital installed as of December 31, 1926, amounted to $654,221, of which a very small part may reasonably be allocated to the water properties. Apparently, the company has willingly acquiesced in the payment of these county taxes, for it must be assumed that, had the company made reasonable efforts to apply for redress to the State Board of Equalization as provided by law, the total taxes levied against properties of the company devoted to the service of water would have been imposed upon those properties devoted exclusively to that service. Analysis of the taxes charged against water service for the year 1927 shows that, for the purposes of this proceeding, the sum of $1,800 may reasonably be allocated as taxes paid upon the properties devoted exclusively to the water service, and this amount apportioned as follows: $600 to Angels domestic service and the remaining $1,200 to the service outside.

The Utica Mining Company maintains a San Francisco office in charge of the general manager of the company's properties, E. S. McCurdy, and also has a resident superintendent an Angels Camp. The San Francisco office is maintained solely as a convenience to the conduct of this company's mining interests and in no sense of the word can be considered as reasonable or necessary in the conduct of its public utility business in Calaveras County. It logically follows therefore that so much of the charges heretofore allocated to the public utility water service and attributable to the San Francisco office is not properly chargeable against the local water operations.

Applicants have submitted an estimate of the annual maintenance and operating expenses for the service furnished outside of Angels Camp amounting to $12,043 and $7,063 for Angels domestic service. However, the evidence shows that the reasonable annual costs of operating and maintaining these systems, after eliminating unreasonable and improper charges, are $4,700 for the outside service and $3,000 for Angels domestic service, making a total of $7,700.

The water operations for 1926 resulted in a net return of practically $3,000. Instead of an out-of-pocket loss, as alleged by applicants, this indicates that the combined water operations of this utility for 1926 produced at least the equivalent of a 4 per cent net return on $75,000, or 6 per cent on $50,000; this return undoubtedly would have been greater had not the utility deliberately discouraged the use of water for irrigation. Applicant has always conducted its water operations and its accounting as a unit and has presented no evidence to this Commission indicating the fair and proper value for rate-fixing purposes of any of its properties, either irrigation or domestic, segregated or otherwise; however, from the evidence available, the net return above does not appear unreasonable under the circumstances. The evidence

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shows that the delivery of water for irrigation purposes produces a greater net return per acre-foot under present rates than the use of such water for the generation of electric power. However, the rates charged by this utility for water have not as yet reached the point where the use of such waters for agricultural purposes is prohibitive; as a matter of fact, many irrigation districts and utilities serving water in foothill regions charge a higher rate for water than applicants. This company has never applied to the Commission for the establishment of a greater and more remunerative rate for its irrigation service, having apparently been satisfied by the gross returns from the water operations as a whole, and, until a utility has shown an endeavor to perform an adequate and reasonable service and made an endeavor to expand such service in the territory it is obligated to supply at rates which may be found reasonable, it should not be permitted to discontinue its public utility duties.

Full consideration of the evidence presented in this matter leads to the conclusion that applicants have failed to justify their request for authority to discontinue their public utility water service to consumers on that part of their water system outside of Angels Camp, and I therefore recommend the following form of order:

ORDER.

Application as above entitled having been made to this Commission, public hearings having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that Hobart Estate Company, a corporation, and Emma Rose, owners as tenants in common of certain public utility properties operated under the fictitious firm name and style of Utica Mining Company, be and they are hereby directed to file with the Railroad Commission, within thirty days from the date of this order, the schedule of rates now charged for all classes of water service delivered to their consumers from their water system outside of the Angels Camp domestic service area.

It is hereby further ordered, that in all other respects the above entitled proceeding be and the same is hereby denied.

The effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-sixth day of April, 1928.

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DECISION No. 19679.

IN THE MATTER OF THE APPLICATION OF RIVERSIDE WATER WORKS FOR THE ESTABLISHMENT OF RATES FOR METERED SERVICE.

Application No. 14444.

Decided April 26, 1928.

RATES—WATER UTILITY.—A. Putnam (Riverside Water Works) operating a water system near Ferndale, Humboldt County, authorized to establish meter rates.

VALUATION—NECESSITY OF.—Where a water system is still in the development stage by reason of a sparsely settled area of service, the questions of return and rate fixing value need not be determined in an application to establish meter rates.

A. Putnam, for Applicant.

BY THE COMMISSION.

OPINION.

In this proceeding, A. Putnam, operating under the fictitious name of Riverside Water Works and engaged in the business of supplying water to Port Kenyon and vicinity, near the city of Ferndale in Humboldt County, asks for authority to establish meter rates to eliminate wasteful use of water.

A public hearing in this matter was held before Examiner Rowell in Ferndale, after all interested parties had been duly notified and given an opportunity to appear and be heard.

The following rates now charged have been in effect on this system since 1911:

"Water for domestic purposes only.
RATES: $1.25 per month for family use.
.05 per month per head for stock."

The water supply of this system is obtained from two springs and delivered to approximately sixty consumers located at scattered intervals along several miles of county roads, the pipe lines extending also along both sides of Salt River below the community of Port Kenyon. By reason of the sparsely settled area served, the system is still in a development stage and therefore the question of return upon the investment and the value thereof for rate-fixing purposes need not be determined herein. Applicant requests the establishment of a meter rate for the conservation of water during the summer months, during which time the springs are taxed to their limit of production. There was no objection on the part of the consumers to the installation of meters and it appears that the schedule of meter rates in effect in the adjacent city of Ferndale is reasonable for this system and therefore will be authorized in the following order:

Complaint was made by certain consumers that the water furnished by applicant at times contains considerable sediment and that the

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pressure is very poor during times of peak demand. The evidence shows that the pipe lines frequently become clogged with silt deposited by reason of poorly constructed intake facilities at the springs and aggravated by lack of blow-off valves. Applicant should at once repair and improve the diversion works by constructing barrier walls above the springs to divert and carry off surface waters, and should install a proper roof and screen on the catchment basin to prevent the entrance of animals and foreign matter with its attendant serious pollution hazard. In addition to the above necessary improvements, blow-off valves should be installed at strategic points on the pipe lines to flush them out and maintain full use thereof. The proper installation of the above improvements should eliminate the past unsatisfactory service conditions on this system.

ORDER.

Application as entitled above having been made to this Commission, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises:

It is hereby found as a fact that the rates now charged by A. Putnam, operating under the fictitious firm name and style of Riverside Water Works, for water supplied to his consumers are unjust and unreasonable in so far as they differ from the rates herein established, and that the rates herein established are just and reasonable rates for the service rendered, and basing its order upon the foregoing findings of fact and upon the statements of fact contained in the opinion which precedes this order;

It is hereby ordered, that A. Putnam be and he is hereby authorized and directed to file with the Railroad Commission, within thirty days from the date of this order, the following schedule of rates for all water delivered to his consumers on and after the first day of May, 1928:

Flat Rates.

$1.25 per month for family use.
.05 per month per head for stock.

Meter Rates.

50	cents per 1,000 gallons for the first	1,000 per month.
35	cents per 1,000 gallons for the next	9,000 per month.
25	cents per 1,000 gallons for the next	10,000 per month.
17½	cents per 1,000 gallons for the next	20,000 per month.
10	cents per 1,000 gallons for all additional.	

No meter rates to be less than $1 per month.

It is hereby further ordered, that A. Putnam be and he is hereby directed to file with the Railroad Commission, within thirty days from the date of this order, rules and regulations governing the service of water to his consumers, said rules and regulations to become effective upon their approval by the Railroad Commission.

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For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-sixth day of April, 1928.

DECISION No. 19681.

IN THE MATTER OF THE APPLICATION OF HOME TELEPHONE COMPANY OF COVINA, A CORPORATION, FOR AUTHORITY TO WITHDRAW TELEPHONE SERVICE FROM CERTAIN TERRITORY IN LOS ANGELES COUNTY.

Application No. 13573.

Decided April 27, 1928.

SERVICE—ABANDONMENT.—Application of Home Telephone Company of Covina to withdraw service from vicinity of San Dimas, denied.

Ernest Irwin, for Applicant and for California Independent Telephone Association. *Edson Abel and J. J. Deuel*, by *Edson Abel*, for certain subscribers, Protestants.

WHITSELL, *Commissioner*.

OPINION.

This is an application of the Home Telephone Company of Covina, which renders telephone service in and adjacent to the city of Covina, and in other communities near Covina. Applicant asks for authority from this Commission to withdraw and remove certain of its telephone services which are located in and adjacent to the city of San Dimas. Pomona Valley Telephone and Telegraph Union also serves this territory within which it has four hundred telephone services.

A public hearing was held in this application at Covina, at which time the matter was submitted for decision.

Applicant states that, during the year 1904, it extended lines into the present San Dimas area, and began rendering telephone service. The number of Covina services in this territory reached a maximum of thirty-six in the year 1914. At that time the Pomona Union, the Sunset Telephone and Telegraph Company and the applicant were in competition in this area.

A few years ago a boundary line was established between the Covina and San Dimas areas (apparently without consulting subscribers therein). It was the intention that thereafter the San Dimas area should be served by the Pomona Union only. However, applicant thereafter continued those services it then had in the San Dimas area and only such of these have been removed as the requirements of individual cases necessitated. This situation has been continued until, at the present time, there are but nineteen Covina Company services remaining in the San Dimas area, and it is these services which applicant requests authority to remove.

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The record shows that fourteen of these subscribers, directly or through their representatives, protested the removal of their services.

The testimony in this proceeding shows that applicant voluntarily furnished the services which it now desires to discontinue; that one of these services was installed as recently as September, 1925, and another in October, 1925, which dates are considerably later than the time when the exchange boundary was established; that the subscribers to these services desire to retain them, and that their continuance will not injure other persons in the San Dimas area.

After full consideration of the record in this proceeding, we find that this application should be denied and the order following will so provide. Applicant should arrange for immediate improvement in its lines and service to those of its subscribers who are located in and adjacent to San Dimas.

The decision made in this matter is based upon the conditions of the installation of these services and upon facts brought out in this proceeding, and it should not be presumed that our finding herein will be properly applicable at other times and under different circumstances in similar matters.

The following form of order is submitted:

ORDER.

Home Telephone Company of Covina, having made application to the Railroad Commission for authority to remove its telephone services from the city of San Dimas and adjacent territory, a public hearing having been held and the matter now being ready for decision, and basing its order on the foregoing finding of fact and upon other findings of fact contained in the opinion preceding this order;

It is hereby ordered, that this application be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-seventh day of April, 1928.

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DECISION No. 19684

FRED MEYERS (PULLMAN WATER COMPANY)

vs.

EAST BAY WATER COMPANY

Case No. 2334.

Decided April 27, 1928.

MONOPOLY AND COMPETITION.—Complaint of Pullman Water Company dismissed.

C. D. Horner, for Complainant.
A. G. Tasheira, for Defendant.
Thomas Carlson, for City of Richmond.

LOUTTIT, *Commissioner.*

OPINION.

Fred Meyers, the complainant in this proceeding as above entitled, owns and operates a public utility under the fictitious name and style of Pullman Water Company, which supplies water for domestic purposes in certain territory located within the corporate limits of the city of Richmond, county of Contra Costa. The East Bay Water Company is a public utility corporation which supplies water for domestic, municipal and industrial purposes to a number of East Bay cities located in Alameda and Contra Costa counties, including the greater portion of the city of Richmond.

In his complaint, as filed herein, Fred Meyers alleges in effect that the California Railroad Commission issued its Decision No. 13237, dated March 4, 1924, on Application No. 9508 of the city of Richmond for an order permitting the East Bay Water Company to lay mains in territory of the Pullman Water Company, wherein it was ordered as follows:

> "It is hereby ordered by the Railroad Commission of the State of California that the East Bay Water Company be and it is hereby authorized to install, in the territory now served with domestic water by the Pullman Water Company in the city of Richmond, Contra Costa County, for public purposes and domestic consumption, the mains and hydrants more particularly described in the application herein, provided the East Bay Water Company purchase, at the present fair value, from the Pullman Water Company the mains, services and meters displaced by the former company, or such part of said equipment as the Pullman Water Company may desire to sell.";

that thereafter the East Bay Water Company installed mains and hydrants in the said territory of the Pullman Water Company covered by above mentioned order and at present are supplying from said pipe mains some thirty domestic consumers. However, the said East Bay Water Company has never made any attempt to purchase, as provided in said order, any part of the mains, services and meters of the Pullman Water Company which were displaced; wherefore, the complainant asks that said East Bay Water Company be ordered to desist

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from serving domestic consumers in any of the territory occupied by Pullman Water Company, and for such further order as may be proper in the premises.

In its answer, the defendant, East Bay Water Company, generally admits the several allegations set forth in the complaint herein, but, on the other hand, alleges in effect that the order in said Decision No. 13237, dated March 4, 1924, was rendered inoperative by reason of the opinion and order which the Commission issued subsequent thereto, being Decision No. 13331, dated March 27, 1924, in Case No. 1977, wherein said East Bay Water Company was ordered by the Commission to immediately install in a number of the east bay cities, including the city of Richmond, certain improvements in extensions of and additions to its distribution system; that said order specified the particular improvements to be installed in the city of Richmond, which included the installation of mains on the two streets complained of herein by the Pullman Water Company; that the mains installed by the East Bay Water Company were the ones ordered by the Commission in its Decision No. 13331 and the service complained of is the service performed in pursuance of authority granted by said last named order.

Public hearings in this proceeding were held at Richmond on May 10 and October 18, 1927, after due notice thereof had been given.

Complainant stated at the hearing that it had no evidence to submit, other than the facts as set forth in its complaint herein which were admitted by the defendant in its answer.

Defendant contends that the order of the Commission in Decision No. 13237, dated March 4, 1924, on which the complaint herein is based, was permissive only in that said defendant was authorized thereby to enter complainant's territory with two six-inch pipe mains on two streets, provided it first purchased such part of complainant's system as was thereby displaced; that defendant, however, did not install said pipe mains under this order, but in fact installed larger mains in compliance with the order of the Commission in its Decision No. 13331, subsequently issued.

The order in Decision No. 13331 specifically directed the installation of mains and provided that their "use will not be restricted to the service of water to municipalities alone." It is apparent from this language that the Commission did contemplate the use of the mains for general service to prospective consumers located in proximity to the mains ordered to be installed. The service complained of herein is furnished through and by means of the mains that were installed in pursuance of said decision and it follows therefore that defendant has not acted in any unlawful or illegal manner, either in installing these mains or furnishing domestic service therefrom.

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The following form of order is suggested:

ORDER.

Complaint having been made by Fred Meyers, operating a public utility water system under the fictitious firm name and style of Pullman Water Company, against East Bay Water Company, a corporation, public hearings having been held thereon, the matter having been submitted and being now ready for decision;

Good cause appearing therefor,

It is hereby ordered, that complainant in the above entitled proceeding take nothing herein and that said complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-seventh day of April, 1928.

DECISION NO. 19686.

IN THE MATTER OF THE APPLICATION OF CHICHIZOLA ESTATE COMPANY FOR A CERTIFICATE OR ORDER AUTHORIZING APPLICANT TO DISCONTINUE PUBLIC SERVICE AND DISTRIBUTION OF WATER AT JACKSON GATE, AMADOR COUNTY, CALIFORNIA.

Application No. 14386.

Decided April 27, 1928.

SERVICE—ABANDONMENT.—Application of Chichizola Estate Company to discontinue water service at Jackson Gate, Amador County, denied.

SERVICE—ABANDONMENT—IN GENERAL.—Authorization to abandon service was denied where the utility was receiving a return in excess of five per cent, could earn more by extending service, and where consumers had no other source of supply available at a reasonable cost.

Wm. G. Snyder, by *Ralph McGee*, for Applicant.
T. G. Negrich, for Protestants.

BY THE COMMISSION.

OPINION.

In this proceeding, Chichizola Estate Company, a corporation, owning and operating a public utility water system at Jackson Gate, near Jackson, Amador County, asks for authority to discontinue the water service to its consumers. Applicant alleges in effect that, in order to continue the service, it will be necessary to expend several thousand dollars for the installation of new mains; that the system is being operated at a loss under the rates in effect; that to provide a proper return upon the investment in the water system would require an increase in rates greater than the consumers could afford to pay. Appli-

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cant further alleges that it is ready and willing to give the present system to the consumers without cost, provided it is permitted to discontinue its utility service.

A public hearing in this proceeding was held before Examiner Rowell at Jackson.

The water supply of this utility is purchased from the Pacific Gas and Electric Company's ditch system and conveyed to a small regulating reservoir, from which it is distributed to about twenty-two consumers, all but one of which is metered. There is a total of 7000 feet of mains on the system.

The rates in effect were established by the Commission in its Decision No. 12005, dated May 2, 1923 (23 C. R. C. 393), and are as follows:

Monthly meter rates:	
0 to 2,000 cubic feet, per 100 cubic feet	$0 10
Over 2,000 cubic feet, per 100 cubic feet	05
Monthly minimum meter rates:	
For ⅝ x ¾-inch meter	2 00
Monthly flat rates:	
Each dwelling or building, per month	2 00

The question of the discontinuance of public utility service by this applicant was before the Commission in 1923, at which time such permission was refused. The evidence in this proceeding shows that this company has been supplying water continuously to its consumers for a period of forty years last past and that the consumers have no other source of water service available that can be procured at a reasonable cost. The present pipe lines have become almost entirely worn-out and require immediate replacement, and at the present time the company has already under construction a new and independent water system which it desires to devote solely to supplying its own private enterprises, although the system can also adequately furnish the needs of all its present consumers and many others in addition thereto who are willing and anxious to receive utility service.

The testimony of William Stava, one of the Commission's hydraulic engineers, indicates that applicant has, during the past several years, realized a net return slightly in excess of 5 per cent upon its investment and in the future, from the operation of its new water system, should receive a net return of not less than 6½ per cent upon the actual cost of said plant, provided service is extended to some thirteen new consumers now desiring water from the utility.

Under these circumstances, it is apparent that the Commission would be wholly unjustified in granting applicant's request to abandon this public utility water system and be relieved from its duties and obligations to serve the public.

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ORDER.

Chichizola Estate Company, a corporation, having applied to the Commission for authority to discontinue water service at Jackson Gate, near Jackson, Amador County, a public hearing having been held thereon, the matter being submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that the application herein be and the same is hereby denied.

The effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-seventh day of April, 1928.

DECISION No. 19691.

IN THE MATTER OF THE APPLICATION OF WESTERN MOTOR TRANSPORT COMPANY FOR A CERTIFICATE TO OPERATE AUTO STAGE LINE BETWEEN MARTINEZ AND STOCKTON AND INTERMEDIATE POINTS, VIA BRENTWOOD, AND BETWEEN BRENTWOOD AND TRACY AND INTERMEDIATE POINTS.

Application No. 5928.

IN THE MATTER OF THE APPLICATION OF STAR AUTO STAGE ASSOCIATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AUTOMOBILE PASSENGER SERVICE BETWEEN OAKLAND AND STOCKTON, OVER THE FOLLOWING ROUTE: OAKLAND TO MARTINEZ VIA FRANKLIN CANYON; FROM MARTINEZ TO STOCKTON VIA BYRON JUNCTION AND BORDEN HIGHWAY; FROM BYRON JUNCTION TO BYRON AND TRACY, AND INTERMEDIATE POINTS, EXCEPTING LOCAL PASSENGERS BETWEEN OAKLAND AND MARTINEZ AND INTERMEDIATE POINTS.

Application No. 6114.

IN THE MATTER OF THE APPLICATION OF JAMES VASSALLO AND GEORGE W. HICKS TO TRANSFER TO STAR AUTO STAGE COMPANY THE OPERATIVE RIGHTS OF THE SAID GEORGE W. HICKS AND JAMES VASSALLO OVER THE ROUTE FROM STOCKTON TO BYRON, SERVING AS INTERMEDIATE STATIONS THE COMMUNITIES AT HOLT, MIDDLE RIVER AND OLD RIVER.

Application No. 6115.

IN THE MATTER OF THE APPLICATION OF R. R. YOUNG, DOING BUSINESS UNDER THE FICTITIOUS NAME OF YOSEMITE TRANSIT, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE MOTOR BUS PASSENGER SERVICE BETWEEN SAN FRANCISCO AND CARL INN AND SAN FRANCISCO RECREATION CAMP, AND FOR SUCH OTHER AND FURTHER SERVICE AS THE HONORABLE COMMISSION MAY DEEM NECESSARY.

Application No. 10913.

IN THE MATTER OF THE APPLICATION OF CONTRA COSTA TRANSIT COMPANY, A COPARTNERSHIP CONSISTING OF E. H. WARD AND H. J. SUTHERLAND AND OF MARTINEZ BAY POINT STAGE COM-

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PANY, A CALIFORNIA CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO BE ISSUED TO SAID COPARTNERSHIP TO OPERATE A PASSENGER AUTOMOBILE STAGE LINE BETWEEN MARTINEZ AND BYRON, CALIFORNIA, AND INTERMEDIATE POINTS, AND FOR AUTHORITY OF SAID COPARTNERSHIP TO ACQUIRE THE EXISTING RIGHT OF MARTINEZ BAY POINT STAGE COMPANY TO OPERATE BETWEEN MARTINEZ AND BAY POINT.

Application No. 10958.

IN THE MATTER OF THE APPLICATION OF COLBERG AND COLBERG, DOING BUSINESS UNDER THE NAME OF CENTRAL TRANSIT COMPANY, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE PASSENGER AND EXPRESS SERVICE BETWEEN STOCKTON AND ANTIOCH AND WAY POINTS.

Application No. 10986.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA TRANSIT COMPANY, A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO (a) CONSOLIDATE ITS OPERATIVE RIGHTS AND ESTABLISH CERTAIN THROUGH SERVICE OVER SEPARATE OPERATIVE RIGHTS, (b) EXTEND ITS OPERATIVE RIGHTS FROM OAKLAND TO SAN FRANCISCO AND (c) TO CORRECT CERTAIN FARES AND ESTABLISH NEW RATES, RULES AND REGULATIONS GOVERNING THE TRANSPORTATION OF PERSONS, BAGGAGE AND EXPRESS.

Application No. 11005.

Decided May 2, 1928.

CERTIFICATE—AUTOMOTIVE TRANSPORTATION.—California Transit Company authorized to operate stage service between Martinez and Stockton, Rodeo and Vallejo, and Stockton and Sacramento.

EVIDENCE—IN GENERAL.—When the showing of one applicant for a certificate is based on the affirmative testimony offered on behalf of another applicant, and the matters have been consolidated for the purpose of receiving evidence and for decision, the testimony of one applicant as to public convenience and necessity must be considered as applicable to both.

EVIDENCE—MATERIALITY.—Evidence relative to the effect of stage operations on the destruction of various classes of improved highways has no substantial weight or material bearing on the issue of public convenience and necessity.

AUTOMOTIVE TRANSPORTATION—TRANSFER OF OPERATIVE RIGHTS—IN GENERAL.—When no operation was ever commenced after authorization from the Commission, there is nothing upon which to base an authorization for transfer. Such operative rights as may have been conferred not having been exercised do not exist.

Sanborn and Roehl, by *H. H. Sanborn*, *A. B. Rochl* and *Delancey C. Smith*, for Applicant in Application No. 5928, and for Protestant, Western Motor Transport Company, in Application No. 6114.

H. H. Gogarty, *L. Richardson*, *H. W. Hobbs* and *F. W. Meilke*, for Southern Pacific Company, Protestant in Applications Nos. 5928, 6114, 10913, 10958, 10986 and 11005.

Jesse H. Steinhart and *A. F. Bray*, for San Francisco-Sacramento Railroad Company, Protestant in Applications Nos. 5928 and 6114.

Grover O'Connor, for Martinez-Bay Point Stage Company, Protestant in Applications Nos. 5928 and 6114.

E. J. Sinclair, for Ward's Auto Bus, Protestant in Applications Nos. 5928 and 6114.

Nutter, Hancock and Rutherford, by *John Hancock*, and *Harry A. Encell*, for Applicant in Applications Nos. 6114 and 6115, and for Star Auto Stage Association, Protestant in Application No. 5928.

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W. V. Hill, for California Electric Railway Association.

Platt Kent and *Jas. B. Duffy*, for Atchison, Topeka and Santa Fe Railway Company, Protestant in Applications Nos. 5928, 6114, 10913, 10958 and 10986.

Morrison, Dunne and Brobeck, by *H. A. Judy*, for San Francisco-Oakland Terminal Railways.

A. B. Tinning, District Attorney, and *J. F. Hoey*, Deputy District Attorney, for County of Contra Costa, Protestant in Applications Nos. 5928 and 6114.

Earl A. Bagby, for California Transit Company, Applicant in Applications Nos. 5928, 6114, 10913 and 11005; Protestant in Applications Nos. 10986 and 10958.

Chickering and Gregory, by *W. C. Fox, Jr.*, for Applicant in Application No. 10986, and Protestant in Applications Nos. 5928, 10913 and 11005.

H. W. Hobbs, for Central California Traction Company, Protestant in Application No. 11005.

Edward Stein, for American Railway Express Company, Protestant in Application No. 11005.

C. W. Dooling, for San Francisco-Sacramento Railroad, Protestant in Applications Nos. 10913 and 11005; for Contra Costa Transit Company, Applicant in Application No. 10958 and Protestant in Applications Nos 5928, 6114 and 10913; for Martinez-Bay Point Stage Company, Applicant in Application No. 10958 and Protestant in Applications Nos. 5928, 6114 and 10913; and for Western Pacific Railroad Company, Protestant in Application No. 11005.

Gwyn H. Baker, for Contra Costa Transit Company, Protestant in Applications Nos. 5928, 6114 and 10913, Applicant in Application No. 10958; for Ward Auto Stage Company, Protestant in Applications Nos. 5928, 6114 and 10913.

H. J. Hoffman, for San Francisco, Napa and Calistoga Railway, Protestant in Application No. 11005.

H. A. Butchard, for Sierra Railway Company of California, Protestant in Application No. 10913.

H. C. Stanley, Assistant District Attorney, for San Joaquin County, Protestant in Applications Nos. 5928, 6114, 6115, 10913, 10958 and 10986.

LOUTTIT, *Commissioner*.

HANDFORD, *Examiner*.

OPINION ON APPLICATIONS Nos. 5928, 6114, 6115 and 10986. OPINION ON REHEARING ON APPLICATIONS Nos. 10913, 10958 and 11005.

In Application No. 5928, Western Motor Transport Company, a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile stage line as a common carrier of passengers between Martinez and Stockton via Avon, Bay Point, Nichols, Pittsburg, Antioch, Oakley and Brentwood; and to coordinate the proposed service with that operated by applicant between Oakland and Martinez and intermediate points and between Vallejo, Napa and Martinez and intermediate points.

In Application No. 6114, Star Auto Stage Association has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an auto stage service as a common carrier of passengers between Oakland and Stockton via Franklin Canyon; from Martinez to Stockton via Byron Junction and Borden highway; from Byron Junction to Byron and Tracy; and including intermediate points on all routes. No local passengers are proposed to be handled between Oakland and Martinez and intermediate points.

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In Application No. 6115, as amended, Star Auto Stage Association has petitioned the Railroad Commission for an order authorizing the transfer of the operating right for the conduct of an automobile stage line between Stockton and Byron, serving as intermediate points the communities of Holt, Middle River and Old River, said operating rights being those granted to George W. Hicks and James Vassallo by the order of the Railroad Commission in its Decision No. 6329 on Application No. 4398, as decided May 14, 1919. By the amended application Geo. W. Hicks and James Vassallo join in the request for authorization of the transfer.

Public hearings on Applications Nos. 5928, 6114 and 6115 were held at Antioch and San Francisco and the matters were submitted following the filing of briefs by counsel. On March 2, 1927, the Commission set aside the order of submission and reopened the matters for further hearing.

On January 26, 1927, California Transit Company, a corporation, successor in interest to R. R. Young, applicant in Application No. 10913 and protestant in Application No. 10958, filed an application for rehearing of that portion of Decision No. 17912 (denied January 18, 1927), which denied the petition of applicant in Application No. 10913 for passenger automobile stage service between San Francisco and Stockton and granted to Contra Costa Transit Company, applicant in Application No. 10958, the right to operate between Martinez and Byron. The Commission on March 2, 1927, granted the rehearing sought by California Transit Company.

In Application No. 10986, William C. Colberg and Henry J. Colberg, copartners doing business under the firm name and style of Central Transit Company, have petitioned the Railroad Commission for an order that public convenience and necessity require the operation by them of an automobile stage service as a common carrier of passengers and express, for compensation, between Stockton and Antioch and the intermediate points of Holt, Middle River, Old River, Byron, Brentwood, Knightsen, and Oakley.

On April 7, 1927, San Francisco-Sacramento Railroad Company, protestant in Application No. 11005, filed its petition for rehearing of said application as decided by Decision No. 18107, decided March 28, 1927, the basis for said rehearing being an alleged erroneous finding that the public convenience and necessity requires the granting to applicant of a through route from Oakland to Sacramento. On April 29, 1927, Southern Pacific Company, protestant in Application No. 11005, filed its petition for the setting aside of Decision No. 18249, being Supplemental Order on Application No. 11005, as decided April 16, 1927. Petitioner alleges as its grounds for rehearing: (1) that there was no showing of public convenience and necessity justifying

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the operation of through automobile stage service between Oakland and Sacramento; (2) that there was no showing of public convenience and necessity justifying the operation of through automobile stage service between Sonora, Jamestown, Oakdale, Stockton and Oakland and intermediate points on the one hand and San Francisco on the other; (3) that there was no showing of public convenience and necessity justifying a general consolidation and unification of the operative rights of California Transit Company and its operation as one unified system of through service between all termini and intermediate points; and (4) that there was no justification for the granting of new certificates of public convenience and necessity in that neither the application nor its amendments sought the issuance of a new certificate or certificates, nor the legalizing of unauthorized operations, nor was any proof made in the record as to public convenience and necessity requiring such operation, and specifically as regards (a) the operation of stages into and out of the city of Lodi, (b) the serving of Lodi as a tariff point, (c) the operation of stages into or out of Shortway, Morrow Cove and South Vallejo, and (d) through stage service between Richmond and Martinez. On July 13, 1927, the Commission made its order granting the rehearing as prayed for by protestants San Francisco-Sacramento Railroad Company and Southern Pacific Company.

California Transit Company on May 23, 1927, filed its supplemental and amended application to Applications Nos. 6114, 5928 and 10913, alleging its succession by purchase to the rights of applicants Star Auto Stage Association, Western Motor Transport Company, and R. R. Young, doing business under the fictitious name of Yosemite Transit. Applicant prays for an order granting to it under the amended and consolidated applications a certificate authorizing the carriage of passengers and express between San Francisco and Oakland on the one hand and Stockton on the other hand via Franklin Canyon, Martinez and the Borden highway, serving all intermediate points, and consolidating such operative rights with all other operative rights of California Transit Company's present system.

Public hearings were held at San Francisco and Stockton at which the matters were consolidated for the receiving of evidence and for decision, and were duly submitted.

Application No. 5928, Western Motor Transport Company; Application No. 6114, Star Auto Stage Association; Application No. 10913, R. R. Young; Application No. 10958, Contra Costa Transit Company.

California Transit Company, a corporation, as successor in interest to Western Motor Transport Company, applicant in Application No. 5928, Star Auto Stage Association, applicant in Application No. 6114, and R. R. Young, applicant in Application No. 10913, by its supplemental and amended application to consolidate such applications and

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to establish service for the transportation of passengers, baggage and express by automobile stages, as a common carrier, for compensation, between San Francisco and Oakland on the one hand and Stockton on the other hand, via Franklin Canyon, serving as intermediate points Richmond Ferry, Richmond, West Berkeley, Albany, San Pablo Junction, Pinole, Franklin Junction, Martinez, Avon, Bay Point, Nichols, Pittsburg, Antioch, Oakley, Brentwood, Byron Junction, Old River, Middle River and Holt; to charge rates in accordance with schedules marked "Exhibits D1 and D2" as attached to the amended application; to operate on a schedule marked "Exhibit C" as attached to the amended application; using as equipment the standard type of motor stages as now operated over its general stage system.

California Transit Company, as the substituted applicant herein, relies as justification for the granting of the desired certificate on the following alleged facts:

1. That applicant is now operating into Martinez from all points between Oakland and Sacramento, including Napa, and is also operating frequent daily stage service between San Francisco, Oakland and Stockton; that applicant also maintains a large terminal for its stage operation at Stockton; and that the present application in so far as transportation between San Francisco and Stockton is concerned proposes a rerouting of a portion of the present stage service now furnished by the applicant.

2. That applicant proposes to furnish a more direct route for local travel between Richmond and Martinez, such portion of the application proposing a rerouting of the present service between Richmond and Martinez for the better accommodation of the traveling public in such territory.

3. That the various rail lines now operating in said territory do not furnish a complete service to intermediate points over said route; and that railroad depots are located at points far distant from the business center of cities and in some instances outside of city limits.

4. That the San Francisco-Sacramento Railroad Company operates between San Francisco and Sacramento with its Oakland depot approximately four miles from the business center of Oakland; that it serves neither Richmond or Stockton nor does it connect with its transportation facilities, the principal communities of the county of Contra Costa through which it passes.

5. That Colberg & Colberg operate a stage service between Stockton and Brentwood, but have no connections with transportation companies whereby passengers can be transported from Stockton to more western points of Contra Costa County beyond Brentwood.

6. That the operative rights of Beverly Gibson provide for an extension of the stage line operating on the so-called River Route between

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Sacramento and Rio Vista providing for an extension to Antioch and thence to Pittsburg, but said operative right only furnishes transportation over a few miles of the territory herein proposed to be served and which should have intercommunication.

7. That practically the same conditions prevail as those stated in the preceding paragraph in relation to the operative rights of two other stage lines operating over a small portion of the proposed route through Contra Costa County.

8. That public convenience and necessity demand the establishment of a transportation system between the termini of Martinez and Stockton, via Antioch and the Borden highway, serving all intermediate points and that in the establishment of such service such system should harmonize with the operation of stages out of Martinez so as to furnish for passengers desiring transportation from or to the territory lying between Martinez and Stockton an efficient and convenient method of reaching the larger cities lying to the west of Martinez.

9. That applicant California Transit Company is well fitted to carry on the proposed operation by reason of its previous experience, its equipment and its financial stability, as well as by reason of the fact that since it does operate to and from both ends of the proposed route, it can by coordination and consolidation so harmonize its operating schedules as to furnish direct and convenient transportation from the territory now propsed to be served to all the territory at present served by this applicant.

10. That conditions as shown at former hearings of applications made by predecessors of California Transit Company justifying the necessity for the proposed operation still exist at the present time, and in a greater degree.

11. That the traveling public object to the inconvenience of changing from one stage to another, from stage to ferry, or from stage to train, but prefer whenever possible to be conveyed to destination without changing equipment and that California Transit Company is the only transportation company that is able to render such service in the proposed territory for the principal points between which the proposed transportation is needed.

12. That the city of Stockton is a large center for the employment of labor and that Contra Costa County is an agricultural country, the need for the importation of labor centering in and about the city of Antioch and that firms engaged in the furnishing of labor, the laborers themselves, and the employers of labor demand frequent and convenient transportation by motor stage between these two centers, which transportation is not now available.

Counsel for protestants, San Francisco-Sacramento Railroad Company, Contra Costa Transit Company, Martinez-Bay Point Stage Com-

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pany objected to the substitution of California Transit Company as successor in interest to Western Motor Transport Company, applicant in Application No. 5928, Star Auto Stage Association, applicant in Application No. 6114, and R. R. Young, doing business under the fictitious name of Yosemite Transit, applicant in Application No. 10913. From the record herein, and after full consideration of the briefs submitted on this contention, we are of the opinion and find as a fact that California Transit Company, a corporation, is the successor in interest to the rights of Western Motor Transit Company, applicant in Application No. 5928, Star Auto Stage Association, applicant in Application No. 6114, and R. R. Young, doing business under the fictitious name of Yosemite Transit, applicant in Application No. 10913.

Mr. Geo. A. Curtis, a witness for applicant Western Motor Transport Company, is the manager of the Balfour-Guthrie Hotel at Brentwood. He testified that the president of his company favors the establishment of the proposed service, Martinez to Stockton, provided that there is assurance that it will be permanent. The Balfour-Guthrie Company cultivates about 13,500 acres of land employing 150 people. The population of Brentwood is estimated by witness as 250 people, and from 8 to 10 passengers travel daily between Brentwood and Stockton with some travel to Antioch, Pittsburg and Martinez. Complaint is made as to the time consumed in traveling to Stockton via Southern Pacific Company, which is the only direct transportation, the service of The Atchison, Topeka and Santa Fe Railway, requiring passengers to use the stations of Oakley or Knightsen, which are 3½ and 5 miles distant from Brentwood. This witness is a member of the Chamber of Commerce of Brentwood, said organization having endorsed the proposed service.

Mr. J. T. Belshaw, a merchant at Antioch and a member of the Antioch Chamber of Commerce, testified in favor of the application of Western Motor Transport Company. Antioch passengers now use the lines of the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company to Stockton.

The Southern Pacific Company's station at Antioch is approximately 1½ miles from the business center. To travel to Martinez, the county seat of Contra Costa County, passengers by stage are required to go from Antioch to Pittsburg, transfer to the San Francisco-Sacramento Railroad to West Pittsburg, there change and go by railroad to Bay Point, at which station the stage of the Martinez-Bay Point Stage Company is taken to destination. The proposed service would be of advantage to Antioch, in the opinion of this witness, who does not consider the present transportation service adequate to Stockton and Martinez, particularly as to the latter point.

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Mr. Geo. H. Shafer, president of the Brentwood Chamber of Commerce, testified that the train schedules of the Southern Pacific Company were not satisfactory and that the organization of which he was president endorsed the granting of the Western Motor Transport Company's application. It is this witness' estimate that the population of Brentwood is 425 and that 1200 people reside in the immediate vicinity and are tributary to Brentwood as regards their use of transportation facilities.

Mr. Joseph A. Jesse, constable at Oakley, testified that 1907 persons resided in his district, which included Oakley and Knightsen. The Southern Pacific is three miles from Oakley, and Martinez is two miles from the Santa Fe depot at Oakley. This witness desires the establishment of the proposed service and knows of other residents of his community that favor it.

Mr. R. V. Davis, a banker at Antioch, testified that the present service between Martinez and Antioch was not satisfactory due to the location of the Southern Pacific station at Antioch being over a mile from the business center, and if the service of the Santa Fe were used, the distance between the station of Muir and Martinez requiring the use of jitney service at a cost of 50 cents.

This witness is of the opinion that there is no necessity for an extension of service west of Martinez but a need exists for service to Martinez.

Mr. Herbert A. West, cashier of the First National Bank at Antioch, testified that the service between Antioch and Martinez was not satisfactory, there being too many changes required by existing stage lines, or if the Santa Fe trains were used there being necessary the employment of jitney service between Muir and Martinez at an expense of $1. The witness would use the proposed service from Antioch to Martinez, Oakley, Brentwood and Byron should same be authorized.

Mr. Bert Gunzberger, a merchant at Antioch, testified the proposed service between Antioch and Martinez was desirable, as well as to intermediate points between Martinez and Stockton, the existing rail and stage facilities not being considered reasonably adequate.

Mr. C. A. Ricks, in the real estate business at Martinez, testified that the present service to Antioch, Byron, Brentwood and Oakley was not satisfactory and that he had heard complaints from his patrons regarding existing service.

Mr. Thomas D. Johnston, an attorney at Martinez, testified that the present transportation facilities were inadequate between Martinez and points in eastern Contra Costa County.

Mr. A. J. LeGrand, constable and deputy sheriff, residing at Byron, testified that existing service from Byron to Stockton, Martinez and

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Antioch was inadequate for the needs of the traveling public, and that he would use the proposed service should it be authorized.

Mr. Milton J. Doyle, a druggist at Antioch, testified the proposed service would be beneficial as regards a saving of time to travelers; that he had heard complaints from his patrons, and that he would personally use the proposed service, if authorized.

Mr. M. G. Azevedo, a barber at Antioch, testified that the present available service between Antioch and Martinez was not good. This witness further testified that the available service between Martinez and Oakland was fairly good and the need for additional service was not present.

Mr. Chas. A. French, a merchant at Brentwood, and secretary of the Brentwood Chamber of Commerce, was of the opinion as an individual and as secretary of the chamber of commerce, that the proposed service would be of material advantage to Brentwood in facilitating travel between Brentwood and Stockton, Antioch and Martinez.

Mr. I. L. Borden, a large land owner, testified that he owned Victoria Island and desired the additional service proposed to save the unnecessary distance travelers were obliged to go when en route to or from Martinez, Bay Point or Antioch, or from Brentwood to Byron and Tracy.

Mr. Alfred S. Ormsby, an attorney at Martinez, testified that the facilities for travel between Martinez and points in the eastern portion of Contra Costa County and to Stockton were inadequate. That the sentiment in his locality was much in favor of the establishment of stage service and increased transportation from Stockton to Oakland through the district comprising Martinez, Bay Point, Pittsburg, Antioch, Oakland, Brentwood and Byron. Witness' clients have frequently complained to him of the inadequate transportation facilities and of the poor service rendered by the Martinez-Antioch route, same requiring four changes en route.

Mr. Volney Taylor, residing at Byron and farming 283 acres, testified as to the need of additional service which would be afforded by the granting of authorization between Stockton and Byron, Stockton being the point from which farm labor was secured.

Mr. E. B. Taylor, an attorney at Martinez, and familiar with the local conditions at Byron, testified that the train service between Byron and Martinez was inadequate for the public. Also as to the difficulty in the securing of farm labor at Byron, witness being interested in a farm which employs 8 to 12 laborers regularly and which has a labor turnover of 45 to 50 men per season.

Mrs. Madge A. Ferrell, in the general merchandise business at Oakley, testified that the Santa Fe railroad served her community with one train each way per day. Witness in her trips to Martinez now uses

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her own automobile but would use a stage service if same were to be authorized.

Mr. John P. Connor, in the general merchandise business at Crockett, testified that the existing service from Crockett to Avon and Bay Point was very poor and not adequate for the public desiring to travel to or from the easterly portion of Contra Costa County.

Mr. F. D. Everman, traffic manager of applicant Western Motor Transport Company, testified as to investigation made of the proposed operation over the route sought by his company. Based on his knowledge gained from such investigation and his previous experience in automobile stage traffic he estimates that 200 passengers per day would be transported over the line between Stockton and Martinez, this including all local traffic intermediate between such points as well as such through business which might originate at or be destined to points west of Martinez on applicant's authorized line.

Three petitions addressed to the board of supervisors of Contra Costa County, and bearing 305 signatures requesting the approval of the application of the Western Motor Transport Company for authority to operate between Martinez and Stockton were filed as an exhibit herein. Certified copies of resolutions adopted by the board of directors of the chamber of commerce of Brentwood and the board of directors of the chamber of commerce of Antioch approving the application of Western Motor Transport Company for service between Martinez, Antioch and Stockton and intermediate points were also filed herein.

The showing of applicant Star Auto Stage Association was based on the affirmative testimony offered in behalf of applicant Western Motor Transport Company, and as these matters have been consolidated for the purpose of receiving evidence and for decision, the testimony of one applicant as to public convenience and necessity must be considered as applicable to both.

The granting of Applications Nos. 5928 and 6115 is protested by Southern Pacific Company, San Francisco-Sacramento Railroad Company, The Atchison, Topeka and Santa Fe Railway, Martinez-Bay Point Stage Company, Ward's Auto Bus and the board of supervisors of Contra Costa County.

Mr. Edward J. Randall, residing at Concord and a member of the board of supervisors of Contra Costa County, and for many years chairman of the board of trustees of Concord, testified regarding his familiarity with the territory in which operation was proposed. Witness is of the opinion that with the Martinez-Bay Point Bus Line connecting with all San Francisco-Sacramento trains at Bay Point there is no necessity for additional service between Martinez and Antioch, and no need for additional service between Martinez and Oakland.

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Mr. C. E. Daley, city clerk of the town of Martinez, and public administrator of Contra Costa County, testified that he considered the existing transportation service between Martinez and the eastern part of Contra Costa County to be adequate when the Martinez-Bay Point Stage Line was operating and connecting with other transportation service at Bay Point.

Mr. Robert Miller, operating taxi service between the Santa Fe station at Muir and Martinez, testified that his charge between such points was a minimum of $1 for a single passenger, two or more passengers being assessed a charge of 50 cents each.

Mr. Ralph H. Wight, an attorney at Martinez, and president of the Martinez Chamber of Commerce, testified that the service of the Martinez-Bay Point Bus Line in connection with the service rendered by the San Francisco-Sacramento, Southern Pacific and Santa Fe railroads was adequate. Witness stated, however, that a direct stage service as herein proposed would be more convenient for the traveling public.

Mr. Horace H. Haynes, residing at Pittsburg, and employed as purchasing agent for the Columbia Steel Company at that point, testified that he had served for four years on the board of trustees of the city of Pittsburg and was familiar with the transportation facilities afforded that community. Witness was of the opinion that the service of the San Francisco-Sacramento Railroad was adequate between Pittsburg and Oakland-San Francisco. The service rendered by Ward's Auto Bus Line is also satisfactory, although witness does not anticipate any diversion of business from the Ward line by the authorization of the proposed service as regards operation between the Columbia Steel Company's plant and Antioch.

Mr. Fred S. Ramsdell, superintendent of schools of Pittsburg, testified that he considered the existing transportation facilities satisfactory and adequate.

Mr. Roy N. Wolfe, city attorney of Pittsburg, testified that he had used the existing transportation service and had no complaint. Witness believed the proposed service might be a convenience.

Mr. John H. Trythall, chairman of the board of supervisors of Contra Costa County and residing about one mile from Antioch, testified that he used Ward's Auto Bus Line between Pittsburg and Antioch, and the Southern Pacific for his trips to Oakland. Witness knows of no need for additional service, and is opposed to additional stage service as being bad for roads, adding to the hazard of travel and to the expense of road maintenance.

Mr. John J. Davi, in the real estate and insurance business at Pittsburg, testified that the service of San Francisco-Sacramento Railroad between Pittsburg and San Francisco-Oakland was adequate and satis-

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factory, also that of the Martinez-Bay Point Stage Line. The witness was fully satisfied with existing service.

Mr. A. V. McFaul, a member of the board of trustees of Pittsburg, knew of no need of any additional service from Pittsburg to San Francisco-Oakland, Bay Point, Martinez or Antioch.

Mr. A. P. Butterworth, publisher of the Pittsburg *Dispatch*, testified that he knew of no need for additional service as proposed.

Mr. E. H. Ward, proprietor of Ward's Bus Line, and one of the protestants, testified as to his operation between Pittsburg and Antioch, meeting all trains of the San Francisco-Sacramento Railroad at Pittsburg, 40 to 50 per cent of his business originating with or being destined to such company. Witness has never had any complaint regarding his service, upon which he lost money for three or four years due to unauthorized competition. He anticipates the establishment of the proposed service would deprive him of 40 per cent of the business now enjoyed between Pittsburg and Antioch.

Mr. A. W. Smith, druggist and justice of the peace at Bay Point, testified that the bus service of the Martinez-Bay Point Stage Company was satisfactory, as was also the train service of the San Francisco-Sacramento Railroad to San Francisco and Oakland.

Mr. L. F. Hines, operating the shipyard concessions at Bay Point, testified that he had not used the Bay Point-Martinez stage service but had used the service of the San Francisco-Sacramento Railroad to Oakland and San Francisco, finding it adequate and satisfactory, having or knowing of no complaint.

Mr. Richard E. Dow, assistant general superintendent of the General Chemical Company at Nichols, testified as to satisfactory service rendered by San Francisco-Sacramento Railroad between Nichols, Sacramento, Oakland and San Francisco.

Mr. C. H. Osborne, chief clerk at the General Chemical Company's plant at Nichols, testified that the San Francisco-Sacramento Railroad service between Nichols and Oakland was adequate and satisfactory; that employees of the chemical company preferred to use the Bay Point-Martinez Stage Line, when same was operating, rather than the Southern Pacific trains.

Mr. W. J. Buchanan, supervisor of District No. 4, and the chairman of the board of supervisors of Contra Costa County, residing at Pittsburg, testified that the establishment of additional stage lines would increase the hazards of traffic over the highways used.

Mr. C. C. Hayden, supervisor of the Third District, Contra Costa Costa County, and a resident of Martinez, testified that the Franklin Canyon road was considered dangerous, that the objection of the supervisors was to the increasing of traffic on such road by the authorization of through service between Oakland and Stockton, it

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being witness' conclusion that no additional transportation facilities were necessary between Martinez and San Francisco. Witness is also a trustee of the town of Martinez and is of the opinion that existing transportation service between that community and the eastern portion of Contra Costa County had been satisfactory.

Mr. H. G. Krumland, employed as clerk in a general merchandise store at Byron, testified that he knew of no need for additional service between Byron and Stockton or from Byron to Martinez or to Oakland.

Mr. Otis Loveridge, superintendent and manager of the C. A. Holt Company, at Holt, and Mr. M. C. Preston, a banker at Byron, both testified that present transportation facilities in their communities were satisfactory in all directions.

Mr. William W. Morgan, a general merchant at Brentwood, testified that he had no necessity for additional transportation facilities from Brentwood toward the east, or from Byron or Brentwood toward the west.

Mr. James D. Donlon, in the ice and fuel business at Antioch, testified as to his familiarity with the transportation facilities both easterly and westerly from Antioch, and was of the opinion that there was no necessity for additional facilities in either direction. Mr. William B. Jewett, a butcher of Antioch, was also of the opinion that service from Antioch to eastern points was adequate.

The evidence of protestants Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company and San Francisco-Sacramento Railroad was contained in exhibits which will be hereafter considered.

The joint timetable filed as an exhibit by the rail carriers shows the following round trips daily as being available between the following points:

Between	*Round trips*
Oakland and Martinez	10
Oakland and Bay Point	16
Oakland and Nichols	13
Oakland and Pittsburg	16
Oakland and Antioch	15
Pittsburg and Antioch	2
Nichols and Pittsburg	1

Exhibits filed by protestant Southern Pacific Company show the ticket sales for local passengers carried by such company between Richmond and Stockton, both inclusive, for a three months period to have been 689, or an average of but 7.65 per day.

Petitions were filed, signed by 281 residents of Contra Costa County, protesting against the granting to Western Motor Transport Company, or any other auto stage company, of certificates for the operation of stages over the county roads. The petitions recite that there is no public need for the establishment of stage lines, as adequate transportation now exists; stage lines are a menace to public safety and other

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traffic using the highways; and the taxpayers of Contra Costa County do not believe the highways of the county should be used by auto stage lines until compensation for such use is made.

During the progress of these proceedings the Commission on Applications Nos. 9892 and 5274 held special hearings at San Francisco and Los Angeles on the question of the combining of operative rights which had been separately granted and thereby establishing a through service. Application No. 5928 was joined in such proceedings and in the Commission's Decision No. 9892 (C. R. C. 20, page 1038) is referred to as follows:

> The Commission held special hearings for the consideration of this question at both San Francisco and Los Angeles, in which Application No. 5928 was joined because a similar issue had developed in that proceeding. This proceeding, Application No. 5928, had no other connection with the matters now under discussion, and will not be further referred to herein. The principles herein set forth, however, may be considered applicable to the decision in that case.

Western Motor Transport Company, by the Commission's Decision No. 10073 on Application No. 7340, was authorized to transfer to California Transit Company all its operative rights, with the exception of the operative right between Rodeo and Livermore as granted by the Commission's Decision No. 7340 on Application No. 5274, and all of its property or assets of every kind and nature, excepting only its franchise as a corporation.

California Transit Company, a corporation, is successor in interest to Star Auto Stage Association, the association having been authorized to transfer all its assets (with the exception of certain operative rights for the conduct of branch lines) to Star Auto Stage Company by this Commission's Decision No. 8150 on Application No. 5163, and Star Auto Stage Company having been authorized to issue stock in payment for the assets required. Star Auto Stage Company, by a decree of the superior court of San Joaquin County, dated April 18, 1921, was authorized to change the name of the corporation to California Transit Company.

The protest of the Contra Costa County board of supervisors as expressed by their petition for a reopening of these proceedings, their individual testimony and the petitions requesting denial of the applications as circulated by the district attorney's office are principally against the establishment of any through service between Oakland and Stockton, via Martinez, and against the establishment of any stage lines to be operated over county roads. The first objection is met by the evidence herein which shows no necessity for additional service between Oakland and Martinez, either locally or as a portion of a through route, beyond that at present available by existing transportation facilities. Regarding the second item of objection, considerable

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evidence was introduced relative to the effect of stage operation on the destruction of various classes of improved highways, but such evidence has no substantial weight or material bearing on the issues here presented. As regards operation over the Contra Costa County highways, it appears that by Decisions No. 5967, dated December 3, 1918, and No. 6011, dated December 21, 1918, on Application No. 4208, Fred V. Pish, Albert Pietronave, Walter Williams and Percy L. Bliss, a copartnership, operating under the fictitious name of Bay Shore Stage Company, were authorized to operate a passenger stage service between Oakland and Martinez, serving as intermediate points the communities at Richmond, San Pablo, Tank Farm, Pinole, Rodeo, Tormey, Crockett and Port Costa Junction. Among the permits granted by the political subdivisions through which the route passed, such permits having been necessary under the provisions of chapter 213, Statutes of 1917, prior to its amendment by chapter 280, Statutes of 1919, appears the permit granted by the board of supervisors of Contra Costa County by its resolution dated September 16, 1918. A minute order of the Contra Costa board of supervisors also appears under date December 16, 1918, authorizing the transfer of the permit formerly granted to a new partnership. Transfer of this operative right was made to the Western Motor Transport Company with the approval of the Railroad Commission as contained in its Decision No. 8490 on Application No. 6401, decided December 23, 1920.

The record in these proceedings as regards the through service between Stockton and Oakland, via Martinez, is conclusive that public convenience and necessity are adequately cared for by the service offered by existing transportation lines, rail and stage. The evidence does not support the contention that there is need for additional service between Oakland and Martinez, either locally or as a portion of a through route, Oakland to Stockton. Such portions of the applications will therefore be denied in the accompanying order.

There appears, however, an affirmative showing of a need for the establishment of service between Martinez and Stockton, such service serving the intermediate points of Avon, Bay Point, Nichols, Pittsburg, Antioch, Oakley and Brentwood only when passengers originate at or are destined to points east of Antioch. The service of the Ward Auto Line between West Pittsburg and Antioch is, according to the record herein, generally satisfactory, such complaint as exists having to do with the annoyance incidental to the necessity for transfer to connecting carriers and sporadic delays at the transfer points. The service of the Bay Point-Martinez stage line has not been satisfactory but from the record herein, road conditions have been a material factor in such line's inability to render adequate service. Both these lines, by the

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order herein, will be protected as regards the local business for which they were established but the evidence herein justifies a through service between Martinez, the county seat of Contra Costa County, and Stockton, the county seat of San Joaquin County, as well as a better method of transportation between Martinez and the easterly portion of Contra Costa County which would be served by a through route between Martinez and Stockton. This service is not now available without the necessity for changes, and when available with changes, is not at convenient hours.

By stipulation, applicant California Transit Company waived the portion of its application proposing local service between Stockton and Brentwood and intermediate points, such territory being served by Colberg and Colberg, operating under the name and style of Central Transit Company.

The record shows applicant California Transit Company to be best fitted by financial responsibility, character of equipment and operating experience to undertake the service which will herein be authorized. Under such conditions the certificate heretofore granted to E. H. Ward and H. J. Sutherland, as copartners doing business under the firm name and style of Contra Costa Transit Company, by this Commission's Decision No. 17912 on Application No. 10913, as decided January 18, 1927, and now on rehearing, granting an operative right for the operation of an automobile stage service for the transportation of passengers and baggage as a common carrier between Byron and Martinez and intermediate points via Brentwod, Oakley, Antioch, Pittsburg and Bay Point, will be canceled and annulled.

After full consideration of the evidence, exhibits and record herein, we conclude and hereby find as a fact that public convenience and necessity require the establishment by California Transit Company of an automobile stage line as a common carrier of passengers between Martinez and Stockton, via Avon, Bay Point, Nichols, Pittsburg, Antioch, Oakley, Brentwood, and over the Borden Highway to Stockton, but that no passengers should be carried locally between Martinez and Antioch and intermediate points, unless such passengers originate at or are destined to points east of Antioch, nor locally between Stockton and Brentwood and intermediate points, unless such passengers originate at or are destined to points west of Brentwood.

Application No. 6115, James Vassallo and George W. Hicks, to transfer operative rights to Star Auto Stage Association.

As regards Application No. 6115, Hicks and Vassallo, to transfer operative rights for a passenger stage line from Stockton to Byron to Star Auto Stage Company.

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The operative rights herein proposed to be transferred were those acquired by James Vassallo by the authority contained in this Commission's Decision No. 6329 on Application No. 4398, decided May 14, 1919. It appears that shortly after the granting of the application and before operation was commenced, the major portion of the road over what is known as the Borden highway was impassable, fires in the peat lands having destroyed bridges and portions of the road. No service was ever rendered by Hicks and Vassallo and, although testimony indicated that at the time of the hearing the road was open for travel, no operation was ever commenced under the authority conferred by Decision No. 6329, nor have any tariffs or time schedules been filed in accordance with the Commission's requirements and regulations. Under the state of fact as disclosed by the record herein, there is nothing before the Commission upon which to base an authorization for transfer, such operative rights as may have been conferred not having been exercised and therefore not existing. We recommend an order denying the transfer.

Application No. 10986, Colberg and Colberg, doing business under the name of Central Transit Company.

Applicants in this proceeding, following the stipulation heretofore referred to in the consideration of Applications Nos. 5928, 6114, 10913 and 10958 have filed a written request for a dismissal of this application. The order will provide for a dismissal of this proceeding.

Application No. 11005, California Transit Company.

In the rehearing of this application testimony was received regarding the contention by protestant Southern Pacific Company that no authority existed for the serving of Lodi by California Transit Company. Four witnesses who formerly were employed as stage drivers between Stockton and Lodi, and Stockton and Sacramento gave testimony as to the operation given and as to the serving of Lodi as an intermediate point on the routes between Stockton and Sacramento. From such evidence it appears as a fact that applicant California Transit Company, through its predecessor in interest, Star Auto Stage Association, did operate out of Stockton over the Cherokee Lane road to Lodi and from Lodi by way of Smith's Lake to Woodbridge and thence to Forest Lake. Also that it operated via the so-called Sacramento road via Henderson to Lodi and from Lodi by the lower Sacramento road or via the road via Smith's Lake to Woodbridge and thence via Forest Lake. The matter of the operation from Forest Lake via the Cherokee Lane road to Lodi received the attention of the Commission in its consideration of Application No. 13428 and the order in Decision No. 19300, decided January 30, 1928, declares that public convenience and necessity require operation by California Transit Company of

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automobile stage service between Stockton and Sacramento and California Transit Company is thereby granted a certificate as follows:

> II. Between Stockton and Sacramento by way of the following routes: (a) via Forest Lake to Woodbridge, to Lodi, to Henderson, to Stockton and reverse; (b) via Cherokee Lane road from Forest Lake to Lodi, to Henderson, to Stockton and reverse; (c) via Cherokee Lane road from Forest Lake to Stockton direct and reverse, omitting service to Lodi except for flag stop on main highway.

No evidence was presented regarding other matters upon which rehearing was requested in this application, and the matter was submitted on the record as heretofore made. Although briefs were to be filed by counsel, the only brief that has been presented is that filed by counsel for applicant.

After a careful review of all the evidence, exhibits and record upon which the Commission based its Decisions Nos. 18107, dated March 28, 1927, and 18249, dated April 16, 1927, we find no justification for any change in the opinion of the Commission as contained in its Decision No. 18107 or the order as contained in its Decision No. 18249 and we recommend that such opinion and order be affirmed.

ORDER.

Public hearings having been held on the above entitled proceedings, the matter having been consolidated for the purpose of receiving evidence and for decision, the matters having been duly submitted, the Commission being now fully advised and basing its order on the conclusions and findings of fact as set forth in the preceding opinion:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by California Transit Company, a corporation, (successor in interest to Western Motor Transport Company, a corporation, applicant in Application No. 5928; Star Auto Stage Association, applicant in Application No. 6114, and R. R. Young, applicant in Application No. 10958), of an automobile stage line as a common carrier of passengers between Martinez and Stockton, via Avon, Bay Point, Nichols, Pittsburg, Antioch, Brentwood and the Borden highway; that no local service over such route is required between Martinez and Antioch, excepting for passengers originating at or destined to points east of Antioch, nor locally between Stockton and Brentwood and intermediate points, unless such passengers originate at or are destined to points west of Brentwood; and

It is hereby ordered, that a certificate of public convenience and necessity be and the same hereby is granted to California Transit Company, a corporation (successor in interest to Western Motor Transport Company, a corporation; Star Auto Stage Association and R. R. Young), for the operation of an automobile stage line as a common carrier of passengers between Martinez and Stockton, via Avon, Bay Point,

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Nichols, Pittsburg, Antioch, Brentwood and the Borden highway; provided, however, that no local service over such route shall be rendered in the carriage of passengers between Martinez and Antioch and points intermediate thereto, unless such passengers originate at or are destined to points on the route east of Antioch, nor locally between Stockton and Brentwood and intermediate points, unless such passengers originate at or are destined to points west of Brentwood.

It is hereby ordered, that Application No. 6115 be and the same hereby is denied.

It is hereby ordered, that the following portion of the order as contained in this Commission's Decision No. 17912 on Application No. 10958 and associated applications Nos. 10684, 10913, 10734 and 10808 be and the same hereby is revoked, canceled and annulled.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the operation by E. H. Ward and H. J. Sutherland, as copartners doing business under the firm name and style of Contra Costa Transit Company, of an automobile stage service for the transportation of passengers and baggage as a common carrier between Byron and Martinez and intermediate points via Brentwood, Oakley, Antioch, Pittsburg and Bay Point; that public convenience and necessity require the transfer by Martinez-Bay Point Stage Company, a corporation, to said E. H. Ward and H. J. Sutherland, copartners doing business under the firm name and style of Contra Costa Transit Company, of an operative right for conducting an automobile passenger stage service for the transportation of passengers between Martinez and Bay Point, heretofore granted to said corporation under this Commission's Decision No. 7275, in Application No. 5197, dated March 17, 1920, and that the same be hereafter merged and consolidated with the right herein granted to said copartnership to conduct a stage service between Byron and Martinez; and

It is hereby further ordered, (1) that a certificate of public convenience and necessity be and the same is hereby granted to said E. H. Ward and H. J. Sutherland, as copartners doing business under the firm name and style of Contra Costa Transit Company, for the operation of the service hereinabove described; and (2) that permission be and the same is hereby granted to said Martinez-Bay Point Stage Company, a corporation, to transfer to said E. H. Ward and H. J. Sutherland, as copartners doing business under the firm name and style of Contra Costa Transit Company, its operative right for conducting an automobile stage service between Martinez and Bay Point, and that the same may be hereafter operated and conducted in connection with, and as a part of, and that it be consolidated and merged with, the operative right hereinabove granted to said Contra Costa Transit Company.

It is hereby ordered, that in accordance with the written request of applicant Colberg and Colberg, doing business under the name of Central Transit Company, Application No. 10986 be and the same hereby is dismissed.

It is hereby ordered, that the order in Decision No. 18249 on Application No. 11005, as decided April 16, 1927, be and the same hereby is affirmed, said order reading as follows:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by California Transit Company, a corporation, of an automobile stage service for the transportation of passengers and baggage, over the following routes:

(a) Between Rodeo and Vallejo, serving as intermediate points the communities of Oleum, Shortway, Morrow Cove and South Vallejo, and between Crockett and Vallejo, serving as intermediate points the communities of Tormey, Shortway,

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Morrow Cove and South Vallejo, both of said routes via Shortway and Morrow Cove and ferry boats operating between said points, in connection with its consolidated operations herein authorized.

(b) Between Oakland and Sacramento and intermediate points now served via Vallejo as hereinafter specified, authority being hereby expressly given to serve said termini and intermediate points by means of a direct through service without interchange or transfer of passengers or baggage at Vallejo, or at any other intermediate point.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the operation by California Transit Company, a corporation, of an automobile stage service for the transportation of passengers, baggage and express (subject to a weight limit of 100 pounds per package), over the following route:

Between San Francisco and Oakland, not as a separate operative right, but in connection with and as a part of applicant's unified and consolidated operations as herein authorized; and in this respect, between San Francisco and all points on applicant's system as consolidated herein, except over the following routes, to wit: between San Francisco and Oakland, on the one hand, and Napa, Martinez, Vallejo or Sacramento, via Vallejo, respectively, or intermediate points, on the other hand: provided, that no passengers or baggage shall be transported to or from San Francisco, originating at or destined to points west of Santa Rita.

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted said California Transit Company for the establishment and operation of the services hereinabove described, subject to the conditions hereinafter set forth.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the consolidation and unification of the operative rights of said California Transit Company as one unified system of through service for the transportation of passengers and baggage between all the termini and intermediate points served by and along its present several routes, except as herein expressly limited, which routes are as follows:

(1) Between Oakland and Sacramento, serving as intermediate points the communities of West Berkeley, Albany, El Cerrito, Richmond, San Pablo, Tank Farm, Pinole, Franklin Junction, Rodeo, Oleum, Shortway, Morrow Cove, South Vallejo, North Vallejo (Vallejo), Flosden, Napa Junction, Sacramento Junction, Creston, Cordelia, Suisun, Fairfield, Vacaville, Substation, Dixon and Davis;

(2) Between Oakland and Martinez, serving as intermediate points the communities of West Berkeley, Albany, El Cerrito, Richmond, San Pablo, Tank Farm, Pinole, Franklin Junction, Rodeo, Oleum, Shortway, Tormey, Crockett and Port Costa;

(3) Between Oakland and Napa, serving as intermediate points the communities of West Berkeley, Albany, El Cerrito, Richmond, San Pablo, Tank Farm, Pinole, Franklin Junction, Rodeo, Oleum, Shortway, Morrow Cove, South Vallejo, North Vallejo (Vallejo), Flosden, Napa Junction, Sacramento Junction, Soscol and Napa Hospital, excepting service locally between North Vallejo and Napa and intermediate points (subject to reservations set forth in the foregoing opinion);

(4) Between Napa and Sacramento, serving as intermediate points the communities of Napa Hospital, Soscol, Sacramento Junction, Creston, Cordelia, Suisun, Fairfield, Vacaville, Substation, Dixon and Davis;

(5) Between Sacramento and Stockton via the following routes, to wit:

(a) Via Forest Lake, Cherokee Lane, Lodi and Henderson, serving as intermediate points the communities of Elk Grove, McConnell, Arno, Galt, Lodi and Henderson;

(b) Via Forest Lake, Woodbridge, Lodi and Henderson, serving as intermediate points the communities of Elk Grove, McConnell, Arno, Galt, Woodbridge, Lodi and Henderson;

(c) Via Forest Lake and Cherokee Lane road direct to Stockton (flag Lodi on highway), serving as intermediate points the communities of Elk Grove, McConnell, Arno, Galt and Lodi (flag on highway);

(6) Between Stockton and San Jose, serving as intermediate points the communities of French Camp, Lathrop Corner, San Joaquin Bridge, Banta, Tracy, Standard Oil, Mountain House, Altamont, Ulmar, Livermore, Pleasanton, Sunol, Mission San Jose, Warm Springs and Milpitas;

(7) Between Stockton and San Francisco, serving as intermediate points the communities of French Camp, Lathrop Corner, San Joaquin Bridge, Tracy, Standard

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Oil, Mountain House, Altamont, Ulmar, Livermore, Pleasanton, Santa Rita, Dublin, Hayward and Oakland; also between Stockton and San Francisco, serving the same intermediate points excepting Pleasanton and/or Hayward;

(8) Between Stockton and Manteca, serving as intermediate points the communities of French Camp, Hedgeside, Lathrop Corner and West Manteca; also between Stockton and Manteca, serving as intermediate points the communities of French Camp, Hedgeside and Turner Station;

(9) Between Stockton and Carl Inn, serving as intermediate points the communities of Collegeville, Escalon, Oakdale, Orange Blossom Ranch, Knights Ferry, Tuolumne Inn, Curtain Ranch, Keystone, Yosemite Junction, Chinese Camp, Shawmut, Jacksonville, Stevens Bar, National Mine, Moccasin Creek, Priest's Station, Big Oak Flat, Groveland, Second Grody, Big Creek, Smith Ranch, Ranger Station, Buck Meadows, Colfax Springs, South Fork, Berkeley Camp, Sunset Camp and Crockers, the service, however, between Groveland and Carl Inn and to intermediate points between said last two termini being seasonal and to be rendered during the open season of each year, approximately between June 1st and September 15th;

(10) Between Stockton and Tuolumne, serving as intermediate points the following communities: Collegeville, Valley Home, Oakdale, Orange Blossom Ranch, Knights Ferry, Tuolumne Inn, Curtain Ranch, Keystone, Yosemite Junction, Jamestown, Sonora, Standard Road and Ralph; also between Stockton and Tuolumne, serving the same last mentioned intermediate stations and in addition thereto the community of Standard;

(11) Between Stockton and Modesto, serving as intermediate points the communities of French Camp, Hedgeside, Lathrop Corner, Munter Corner (West Manteca), Manteca, Calla, Weston, Ripon, Salida; also between Stockton and Modesto, serving as an intermediate point the community of Turner Station, in addition to the intermediate points last above set forth, and excepting the communities of West Manteca and Lathrop Corner;

(12) Between Tracy and Fresno, serving as intermediate points the communities of Vernalis, Westley, Patterson, Crows Landing, Newman, Gustine, Volta, Los Banos, Santa Rita Ranch Junction, Dos Palos, Oxalis, Firebaugh and Mendota; also between Tracy and Fresno, serving as intermediate points the same communities above described as lying between Tracy and Los Banos, and in addition thereto the following communities: Santa Rita Ranch Junction, Chowchilla Road Junction, Chowchilla, Califa, Berenda, Madera, Herndon;

(13) Between Los Banos and Merced, serving as intermediate points the communities of Santa Rita Ranch Junction and Chowchilla Road Junction;

(14) Between San Francisco and Bakersfield, serving as intermediate points the communities of Oakland, Canyon Inn, Dublin, Santa Rita, Livermore, Ulmar, Altamont, Mountain House, Standard Oil, Tracy, San Joaquin Bridge, West Manteca, Manteca, Calla, Weston, Ripon, Salida, Modesto, Ceres, Esmar, Keyes, Turlock, Delhi, Livingston Arena, Atwater, Duhach, Merced, Athlone, Minturn, Chowchilla, Fairmead, Berenda, Madera, Borden, Irrigosa, Herndon, Biola Junction, Fresno, Malaga, Fowler, Star, Selma, Kingsburg, Traver, Goshen Junction, Plaza, Tulare, Tipton, Pixley, Earlimart, Delano, McFarland, Famosa, Kimberlena, Lerdo and Saco;

(15) Between Fresno and Bakersfield, serving as intermediate points the communities of Malaga, Fowler, Star, Selma, Kingsburg, Traver, Goshen Junction, Plaza, Visalia, Farmersville, Exeter, Lindsay, Strathmore, Porterville, Terra Bella, Ducor, Richgrove, Delano, McFarland, Famosa, Kimberlena, Lerdo and Saco;

(16) Between Visalia and Tulare, serving as an intermediate point the community of Mooney's Grove;

(17) Between Fresno and Dinuba, serving as intermediate points the communities of Malaga, Fowler, Parlier, Lacjac Avenue and Reedley; also between Fresno and Dinuba, serving as intermediate points, the following communities: Malaga, Fowler, Star, Selma, Parlier, Lacjac Avenue and Reedley;

(18) Between Dinuba and Visalia, serving as intermediate points the communities of Sultana, Orosi, Cutler and Yettem Junction.

Provided, however:

(1) That the consolidation of the route between Oakland and Napa shall be without prejudice to the determination of pending proceedings affecting said operative right;

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(2) That the route between Pinole and Martinez, via Franklin Canyon, is excluded from this consolidation, this decision being made entirely without prejudice as to the determination of all questions affecting said route;

(3) That this decision excludes all matters affected by Applications Nos. 5928, 6114 and 10913, and the so-called Morse lines leased to applicant pursuant to Decision No. 14917, Application No. 11004, being rendered without prejudice to the future consolidation of any operative rights granted therein;

(4) That nothing herein is to be construed as affecting decisions of the Railroad Commission of the State of California rendered after the submission of this application and affecting the operative rights, routes, termini or intermediate points mentioned in this application.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the consolidation and unification of the operative rights of said California Transit Company as one unified system of through service for the transportation of express upon its passenger cars only (subject to a uniform maximum weight limit of 100 pounds per package applicable throughout the system except where express rights do not exist), between all the termini and intermediate points served by and along its present several routes, in this order last hereinabove described, except that no right to transport express is herein granted over or along the following routes, either as separate routes or as part of applicant's consolidated system, to wit:

(a) Between Oakland and Martinez and intermediate points,
(b) Between Oakland and Napa and intermediate points,
(c) Between Oakland and Vallejo and intermediate points,
(d) Between Vallejo and Sacramento and intermediate points.

It is hereby further ordered, that a certificate of public convenience and necessity be and the same is hereby granted to said California Transit Company consolidating and unifying the operative rights and routes herein described, permitting said California Transit Company to operate the same as one unified system and authorizing the operating of through service for the transportation of passengers and baggage between all termini and all intermediate points served by and along its present several routes or operative rights hereinabove described (except as hereinabove expressly limited); also authorizing the operation of through service for the transportation of express between all the termini and all intermediate points served by and along its present several routes or operative rights hereinabove described, except the following, to wit:

(a) Between Oakland and Martinez and intermediate points,
(b) Between Oakland and Napa and intermediate points,
(c) Between Oakland and Vallejo and intermediate points,
(d) Between Vallejo and Sacramento and intermediate points,

subject to the conditions hereinafter set forth.

It is hereby further ordered, that said California Transit Company be and it is hereby authorized to establish and put into effect immediately the rates, fares, rules and regulations applicable to and governing the transportation of passengers, baggage and express over and throughout its system as consolidated (being limited as to express as hereinabove set forth), which were proposed herein by said applicant, including a fare of 25 cents per passenger for the transportation of passengers between Oakland and San Francisco and the proposed zone basis for express rates as hereinabove referred to.

It is hereby further ordered, that in all other respects said application be and it is hereby dismissed without prejudice.

The authority hereby granted to California Transit Company, a corporation, is subject to the following conditions:

1. That the transportation of express matter as authorized under Application No. 11005 within the limit of 100 pounds herein fixed shall be limited to transportation on passenger cars used in the operations of the California Transit Company over the unified system as herein authorized.

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2. Applicant shall file its written acceptance of the certificates herein granted within a period of not to exceed ten days from the date hereof.

3. Applicant shall file, in duplicate, within a period of not to exceed thirty days from the date hereof, tariffs of rates, fares and time schedules, such tariffs of rates, fares and time schedules to be similar to those submitted by applicant at the hearings of these applications, or rates, fares and time schedules satisfactory to the Railroad Commission; and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5. No vehicle may be operated by California Transit Company, a corporation, applicant herein, unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all purposes, other than hereinabove stated, the effective date of this order is hereby fixed as twenty days from the date hereof.

Dated at San Francisco, California, this second day of May, 1928.

DECISION No. 19692.

IN THE MATTER OF THE APPLICATION OF WILMINGTON TRANSFER AND STORAGE COMPANY, INCORPORATED, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE FREIGHT TRUCK TRANSPORTATION SERVICE BETWEEN LOS ANGELES HARBOR DISTRICT, VIZ. WILMINGTON, SAN PEDRO, EAST SAN PEDRO AND TERMINAL ISLAND, ON THE ONE HAND, AND LOS ANGELES PROPER AND VARIOUS OTHER POINTS AS DESIGNATED IN ROUTES NOS. 1 TO 6 OF AMENDED EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF THIS APPLICATION, ON THE OTHER HAND.

Application No. 10858.

(Supplementary.)

Decided May 2, 1928.

CERTIFICATE—AUTOMOTIVE TRANSPORTATION.—Application of Wilmington Transfer and Storage Company to enlarge operative rights denied.

EVIDENCE—AS TO COVENIENCE AND NECESSITY.—Letters from shippers storing goods with a transfer and storage company, inquiring as to rates for distribution, are not satisfactory evidence of a demand on the part of the public that the proposed truck service of such company is required.

EVIDENCE—AS TO CONVENIENCE AND NECESSITY.—The desire of an applicant, unsupported by other testimony, is not affirmative of public need unless there is no existing method of transportation.

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Henry E. Carter, for Applicant.
S. B. Cowan, for Triangle-Orange County Express, Rice Transportation Company and Donovan Transfer, Protestants.
Phil Jacobson, for Los Angeles and San Pedro Transportation Company and Keystone Express, Protestants.

BY THE COMMISSION.

OPINION.

Applicant herein, by this supplementary application, seeks to modify by enlargement the order upon the original application in Decision No. 18150 of this Commission dated March 31, 1927. The supplementary application asks the removal of restrictions put upon routes 3, 4 and 5, and to permit service on these and other routes in either direction in quantities of three tons or more. At the hearing the application was amended by reducing the minimum quantity from three tons or over to 1000 pounds or over, and the amendment was permitted.

Public hearings herein were conducted by Examiner Williams at Los Angeles.

Applicant herein conducts a warehouse at Wilmington, Los Angeles harbor, and has been conducting in connection therewith a trucking and transfer business for many years. In the hearing on the original application, all the facts with reference to its prescriptive rights were heard, and the Commission in the order determined the scope of operation applicant would be permitted to continue as a public carrier because of public necessity therefor. Applicant now seeks to include in its operations many of the commodities and kinds of service that were excluded in the original order or were made subject to weight or other restrictions. Applicant is now authorized to transfer oils, acetylene and oxygen gas, vegetable oils, laundry supplies and machinery from Los Angeles harbor (including Wilmington, San Pedro, East San Pedro, Terminal and Mormon) over all of the routes applied for, six in number. The routes lead to Los Angeles, Long Beach, Compton, Downey, Clearwater, Puente, Pomona and Ontario and directly intermediate points; to Seal Beach, Sunset Beach, Huntington Beach, Newport Beach, Balboa Beach, Santa Ana, Orange, Anaheim and Fullerton and intermediate points; to Watts, Glendale, Pasadena, Alhambra, El Monte, Sierra Madre, Monrovia, Azusa, Glendora, Covina and intermediates; and also to Lomita, Torrance, Hawthorne, Hermosa, Redondo, El Segundo, Inglewood, Venice, Ocean Park and directly intermediate points. It was also given the right to transfer machinery, construction steel, cement, sand, rock, lumber and incidentals to be used on harbor construction work, from points designated to Los Angeles harbor. On routes 3, 4, 5 and 6, which were routes not to Los Angeles or Long Beach, it was restricted to three tons minimum with no limit as to the return of empty containers; that loads for points on routes 3, 4 and 5 must originate at Los Angeles harbor and have no return shipments except empty containers; that shipments may move in both

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directions on routes 1, 2 and 6, except from point to point within a route, or from a point within one route to a point within another route. The effect of the present application is to enlarge these rights and leave the applicant at liberty to transport any quantities of 1000 pounds or more over all routes in either direction without regard to point of origin or destination.

Applicant, through its president and general manager, J. P. Puckett, urged the granting of the application, upon the ground that the volume of traffic at the harbor had doubled in the three years previous to the hearing, and that greater demands were being made upon applicant in the matter of truck transportation than the limitations of the certificate permitted applicant to handle; that many of the shipments are less than three tons in weight and move to destinations which it is not now permitted to serve; that applicant finds, at many places where it is authorized to serve in one direction only, available return tonnage. Mr. Puckett testified that all quantities less than three tons that had been tendered to this applicant for transportation or delivered to its warehouse for distribution have been shipped over the lines of existing carriers either directly or by transfer, but that this method was not as prompt as the shipper and consignee desired; that it involved transfers at Los Angeles and other impediments to direct transportation. Mr. Puckett testified that he had been offered return hauls at Monrovia, Pomona, Santa Ana, Venice and Azusa; that he had a demand from Monrovia and Azusa to transport fertilizer in large quantities, for which he now has no authority or rates.

In support of the testimony of Mr. Puckett, applicant submitted a group of letters from its files from shippers to Los Angeles harbor from points outside the city of Los Angeles, in which request was made generally for rates for distribution (indefinitely in most cases) to southern California points. The writers of these letters were shippers who wish to store commodities with applicant and have them distributed according to their instructions from time to time. Many of these letters were inquiries as to how distribution could be made, and others were inquiries for particular rates for their own commodities. These letters (Exhibit No. 1) are not satisfactory evidence of a demand on the part of the public that the service of the particular applicant was required to make a distribution. They are evidence only that there is a moderate volume stored with applicant which might move to various points from time to time.

Exhibit No. 2 filed by applicant shows that during the six months preceding the hearings, applicant delivered to other truck companies, at their terminals or warehouses, shipments to thirteen different carriers, and also delivered to carriers at the warehouse of applicant shipments to twenty-five carriers. This exhibit was cited as evidence

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that all the movements for which these transfers had been made could be made by applicant if it were not restricted from hauling the commodities involved or was not restricted from hauling the quantities to the destinations sought.

Exhibit No. 3 is a list of the commodities which applicant has stored in bulk for distribution, comprising about sixty classes of merchandise.

Another exhibit (No. 4) showed that applicant at the time of filing the original application occupied but 17,280 square feet, while at the time of the hearing it has increased to 77,425 square feet. Also its equipment had increased during the same period from ten to fifteen pieces, with an outstanding indebtedness of only $2,500.

Exhibit No. 5 listed the transportation companies between Los Angeles harbor and Los Angeles, showing thirty-two truck operators and four rail services.

Exhibit No. 6 was a resolution by the Wilmington Chamber of Commerce urging the granting of the certificate applied for.

R. K. Dickinson, from Santa Ana, proprietor of a transfer and storage business, testified that he would act as distributing agent for the applicant at Santa Ana. He further testified that he would do this in order to get revenue, as the lines now serving Santa Ana and Orange County points—Triangle-Orange County Express and Richard Trucking and Warehouse Company—make their own deliveries, and he received no business from them. The witness, on cross-examination, admitted that the Triangle-Orange County Express service was very good.

Fred A. Simons, a solicitor for applicant, testified that he had received complaints from the Metropolitan Chain Store at Whittier, of delay and too much damage and tardy adjustment of complaints from existing carriers, and also that he had received a similar complaint from a customer at Venice, but did not remember what carrier was complained of. This witness testified further that many of the businesses he called upon urged a direct distribution by applicant from the harbor.

On behalf of protestants, Conrad Schweitzer, traffic manager of the Los Angeles and San Pedro Transportation Company, testified this company now has seventy-five pieces of equipment in service in transporting property from Los Angeles harbor points to Los Angeles; that it connects with and distributes to all the interurban carriers out of Los Angeles, and that the connection permits second-day delivery. There are also joint rates through from the harbor over many of the larger lines radiating from Los Angeles to southern California points.

J. R. Zimmerman, president of City Transfer and Storage Company of Long Beach, testified that the protestant maintains two daily services between Long Beach and the harbor, and has seventy-three pieces of

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equipment available, a part of which is available at harbor points at all times. He testified that this protestant has been able to handle as high as 200 tons daily, and that service is available on less than one hour's notice. This applicant serves also Downey, Compton and other points.

S. B. Cowan, testifying in his own behalf, stated that he had a direct service from the harbor to Orange County points and Santa Monica Bay points, with daily service.

We have given careful consideration to the record as presented by applicant under its supplementary application, and find therefrom that applicant has not produced affirmative testimony that there is a public need for the service it seeks to establish. Outside of applicant itself, and its correspondence, no witness was produced to show that the service is required. The Commission has repeatedly held that the desire of an applicant, unsupported by other testimony, is not affirmative of public need, unless there is no existing method, which is not the case herein. With the abundance of trucking service between the harbor and Los Angeles, and the many, well-established truck lines from Los Angeles to all points in southern California, and an utter absence of showing of their inadequacy or inefficiency, we can not find reason to modify the order originally made in Decision No. 18150. An order of denial will be entered accordingly.

ORDER.

Wilmington Transfer and Storage Company, Inc., having made application to the Railroad Commission for a certificate of public convenience and necessity to operate freight truck transportation service between Los Angeles harbor district and various points in southern California, public hearings having been held, the matter having been duly submitted, and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity do not require the service proposed by applicant herein; and

It is hereby ordered, that the application herein be and the same is hereby denied.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this second day of May, 1928.

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Decision No. 19698.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY OF CALIFORNIA TO PURCHASE ALL OUTSTANDING SHARES OF STOCK OF FAIR OAKS ELECTRIC COMPANY AND OF FAIR OAKS ELECTRIC COMPANY TO DISTRIBUTE AND OF GREAT WESTERN POWER COMPANY OF CALIFORNIA TO ACCEPT ALL OF THE ASSETS OF SAID FAIR OAKS ELECTRIC COMPANY, UPON THE DISSOLUTION OF SAID FAIR OAKS ELECTRIC COMPANY, AND OF SAID GREAT WESTERN POWER COMPANY OF CALIFORNIA AND SAID FAIR OAKS ELECTRIC COMPANY TO PUT IN FORCE AND EFFECT ON THE SYSTEM OF SAID FAIR OAKS ELECTRIC COMPANY RULES, REGULATIONS AND SCHEDULES OF SAID GREAT WESTERN POWER COMPANY OF CALIFORNIA.

Application No. 14546.

Decided May 2, 1928.

TRANSFER.—Great Western Power Company of California authorized to purchase all outstanding stock ($10,300) of Fair Oaks Electric Company and the latter authorized to transfer its properties.

CONSOLIDATION—PURCHASE PRICE—ACCOUNTING.—Where one utility, in purchasing the properties of another, pays more than the actual or estimated historical cost, the difference between such historiael cost and the purchase price should be charged to surplus and not to capital accounts.

Chaffee E. Hall, for Great Western Power Company of California.
R. A. Rose, for Fair Oaks Electric Company.

BY THE COMMISSION.

OPINION.

In the above entitled matter the Railroad Commission is asked to make its order:

1. Authorizing Great Western Power Company of California to purchase all of the outstanding capital stock of Fair Oaks Electric Company;

2. Authorizing Fair Oaks Electric Company to distribute to Great Western Power Company of California all of its properties and assets; and

3. Authorizing applicants to institute and put into effect as of the first meter reading date subsequent to the order herein, all of the rules, regulations and schedules of rates of Great Western Power Company of California applicable to similar territory of said Great Western Power Company of California.

The application shows that Fair Oaks Electric Company owns and operates certain electric distribution properties situate in and about the unincorporated town of Fair Oaks, Sacramento County, and that it is engaged in serving by means of such properties approximately 285 consumers. Energy is purchased from Great Western Power Company of California which has a 22,000 volt line passing through the town.

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As of December 31, 1927 the company reports its assets and liabilities as follows:

Assets.

Fixed capital in service		$28,736 49
Current assets:		
Cash	$3,159 61	
Notes receivable	1,500 00	
Accounts receivable	2,032 85	
		6,692 46
Deferred debits		390 00
Total		$35,818 95

Liabilities.

Capital stock (common)		$10,300 00
Bonds		9,500 00
Current liabilities:		
Accounts payable	$4,106 27	
Consumers' deposits	22 50	
Taxes accrued	2,245 42	
		6,374 19
Consumers' advances for construction		932 94
Depreciation reserve		3,986 04
Corporate surplus		4,725 78
Total		$35,818 95

It appears that on February 29, 1928, Great Western Power Company of California entered into an agreement with R. A. Rose for the purchase of all the outstanding stock of Fair Oaks Electric Company for a total payment of $37,500 plus an amount in cash equal to the good accounts and notes receivable as of March 1, 1928, less an amount in cash equal to the bills and accounts payable, including refunds due or to become due to consumers for advances in aid of construction as of said date. Upon obtaining the stock Great Western Power Company of California plans to cause a conveyance of the properties to it, to pay the outstanding $9,500 of bonds and to dissolve the Fair Oaks Electric Company.

Testimony was offered at the hearing in this matter on the value of the properties of Fair Oaks Electric Company, a representative of the purchaser estimating the reproduction cost new as of January 1, 1928, at $44,906, the accrued depreciation at $12,000, the estimated reproduction cost new less depreciation at $32,906 and the historical cost at $28,736. It will be observed that the amount Great Western Power Company of California proposes to pay in acquiring the properties and in paying the outstanding bonds is in excess of any of the valuation figures. In this connection attention might be called to the fact that heretofore the Commission has held that where one utility in purchasing the properties of another, pays more than the actual or estimated historical cost, the difference between such historical cost and the purchase price should be charged to surplus and not to capital accounts. We believe, in the present case, that in recording the purchase of these

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properties on its books, Great Western Power Company of California should charge to fixed capital accounts only an amount equal to the historical cost and should charge the balance of the purchase price to account 508—miscellaneous debits to profit and loss. It should be noted, however, that as of December 31, 1927, Fair Oaks Electric Company reported a credit balance in its reserve for depreciation of $3,986.04, which should be taken into consideration if at any future time the purchaser comes before the Commission for an order authorizing the issue of stock, bonds, notes or other evidences of indebtedness to finance the cost of these properties. This, however, is not now before the Commission.

It is proposed to place in effect on the system of Fair Oaks Electric Company the rules, regulations and schedules of rates of Great Western Power Company of California, which rates are said to be uniformly lower than those now in effect.

ORDER.

Application having been made to the Railroad Commission, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the acquisition by Great Western Power Company of California of the stock and properties of Fair Oaks Electric Company is in the public interest, and that the application should be granted, as herein provided;

It is hereby ordered, that Great Western Power Company of California be and it hereby is authorized to purchase on or before September 30, 1928, and thereafter hold all the oustanding $10,300 of stock of Fair Oaks Electric Company, subject to the terms and conditions of the agreement of February 29, 1928.

It is hereby further ordered, that Fair Oaks Electric Company be and it hereby is authorized to transfer to Great Western Power Company of California, on or before September 30, 1928, all of its properties and assets.

It is hereby further ordered, that Fair Oaks Electric Company and/or Great Western Power Company of California be and they hereby are authorized to institute, and put into effect, as of the first meter reading date subsequent to the granting of this application, the rules, regulations and schedule of rates of Great Western Power Company of California.

It is hereby further ordered, that Great Western Power Company of California, in recording on its books of accounts the purchase of the properties of Fair Oaks Electric Company, shall charge to fixed capital accounts, as those accounts are defined in the uniform system of accounts for electric corporations prescribed by this Commission

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and effective on January 1, 1923, not more than $28,736 plus the cost of additions and betterments from December 31, 1927 to the date of transfer of the properties; and that it shall charge the remainder of the purchase price to account 508—miscellaneous debits to profit and loss.

It is hereby further ordered, that Fair Oaks Electric Company be and it hereby is authorized, upon the conveyance of its properties to Great Western Power Company of California, to cease furnishing and supplying electric energy in the territory in which it now operates.

It is hereby further ordered, that Great Western Power Company of California, within thirty days after acquiring ownership of the properties herein authorized transferred, shall file with the Commission a certified copy of the deed or other instrument of conveyance and a copy of each and every bookkeeping entry entered on its books to record the aforesaid transaction, such entries to show the distribution of the $28,736 to primary accounts.

It is hereby further ordered, that Fair Oaks Electric Company shall file with the Commission a financial report, on the regular annual report forms prescribed by the Commission, covering the period from January 1, 1928, to the date of transfer of its properties, said report to be filed within sixty days after the transfer of such properties.

It is hereby further ordered, that the authority herein granted shall become effective upon the filing by Great Western Power Company of California, with the Commission, of a written statement accepting the authority herein granted.

Dated at San Francisco, California, this second day of May, 1928.

DECISION No. 19699.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, FOR AUTHORITY TO ISSUE AND SELL ONE HUNDRED FORTY THOUSAND (140,000) SHARES OF ITS COMMON STOCK.

Application No. 14614.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, FOR AUTHORITY TO ISSUE AND SELL EIGHTY THOUSAND (80,000) SHARES OF ITS PREFERRED STOCK, SERIES "C" 5½ PER CENT.

Application No. 14615.

Decided May 2, 1928.

SECURITY ISSUES.—Southern California Edison Company authorized to issue and sell to its employees at not less than $30 per share 140,000 shares of its capital stock of the par value of $3,500,000 and to issue and sell at not less than $24.50 per share, 80,000 shares of its series "C" 5½ preferred stock of the par value of $2,000,000.

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Roy V. Reppy and *Gail C. Larkin*, for Applicant.

BY THE COMMISSION.

OPINION.

In these two proceedings the Railroad Commission is asked to authorize Southern California Edison Company to issue and sell at not less than par 140,000 shares of its common capital stock, of the aggregate par value of $3,500,000, and at not less than $24.50 a share 80,000 shares of its series "C" 5½ per cent preferred stock of the aggregate par value of $2,000,000. It further asks permission to use a portion of the proceeds obtained from the sale of the stock, amounting to seventy-five cents a share, to cover the costs incurred in connection with such sale and to consolidate the balance of the proceeds with the proceeds from the sale of other stock heretofore authorized to be issued and sold, and to use said proceeds to finance the cost of extensions, betterments and additions, as provided for in its 1928 annual budget heretofore filed with the Commission.

In a preceding application, No. 14107, the company filed as its Exhibit "6," a copy of its 1928 construction budget showing estimated expenditures for the year of $32,091,000. It appears that during the first three months of the year the construction expenditures amounted to $7,641,106.17, leaving a balance of about $24,450,000 for the remaining nine months of the year. Of the expenditures made prior to March 31, 1928, it is reported in Exhibit "7" in this proceeding, that there was a balance against which no securities had been issued of $340,280.67.

To meet in part the unfinanced balance of $340,280.67 and the estimated expenditures of about $24,450,000 for the remainder of the year, a total of $24,790,280.67, the company reports due as of March 31, 1928, on account of the unpaid balances on stock subscriptions, the sum of $4,298,852.72. It appears that of the stock heretofore authorized to be issued and sold, there remained unsold on April 21, 1928, stock of the aggregate par value of about $11,709,250 so that the issue of additional stock seems necessary to take care of the 1928 construction costs. In this connection it might be added that some of applicant's stock has been sold under installment payment contracts with the result that not all the $4,298,852.72 due on stock subscriptions will be collected this year.

The company proposes to offer the stock herein applied for to its employees in units consisting of one share of common stock and one share of series "C" preferred stock for $54.50 a unit, this being based on a price of $30 a share for the common stock and $24.50 a share for the preferred. Employees who have heretofore subscribed for applicant's 5½ per cent and 6 per cent preferred stock will be given an opportunity to subscribe for common stock on a basis of $30 per share.

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The subscription agreements will be nonassignable. They will not permit the subscriber to anticipate any payments. Payment for the stock will be on a monthly basis, such payments being equal to about 7½ per cent of the employee's salary. The employee's account will be credited with the dividends being paid on the stock and charged with interest at the rate of 5 per cent per annum.

ORDER.

Southern California Edison Company, having applied to the Railroad Commission for permission to issue and sell $3,500,000 of common and $2,000,000 of series "C" 5½ per cent preferred stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Southern California Edison Company be and it hereby is authorized to issue and sell to its employees at not less than $30 a share, 140,000 shares of its common capital stock of the aggregate par value of $3,500,000.

It is hereby further ordered, that Southern California Edison Company be and it hereby is authorized to issue and sell on or before December 31, 1929, at not less than $24.50 a share, 80,000 of its series "C" 5½ per cent preferred stock of the aggregate par value of $2,000,000.

It is hereby further ordered, that Southern California Edison Company be and it hereby is authorized to use an amount of the proceeds not exceeding seventy-five cents per share of stock sold to pay commissions and expenses incident to the sale of such stock and to consolidate the remaining proceeds, and such portion of the seventy-five cents not needed for commissions and expenses incident to the sale of said stock, with the proceeds received or to be received from the sale of stock heretofore authorized to be issued and sold, and to use such consolidated proceeds to finance in part the cost of the extensions, betterments and additions to its properties reported in its 1928 annual budget, a copy of which hertofore has been filed with the Commission as Exhibit No. 6 in Application No. 14107, provided that only such cost of the extensions, betterments and additions as is properly chargeable to fixed capital accounts under the uniform system of accounts prescribed or adopted by this Commission may be financed with such proceeds.

It is hereby further ordered, that Southern California Edison Company shall keep such record of the issue, sale and delivery of the stock

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herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

It is hereby further ordered, that the authority herein granted shall become effective upon the date hereof.

Dated at San Francisco, California, this second day of May, 1928.

DECISION No. 19707.

IN THE MATTER OF THE APPLICATION OF PARR TERMINAL COMPANY AND PARR TERMINAL CORPORATION FOR AN ORDER AUTHORIZING THE TRANSFER OF CERTAIN PROPERTY FROM PARR TERMINAL COMPANY TO PARR TERMINAL CORPORATION. THE ISSUANCE BY PARR TERMINAL CORPORATION OF CERTAIN SHARES OF ITS CAPITAL STOCK TO PARR TERMINAL COMPANY AND THE ASSUMPTION BY PARR TERMINAL CORPORATION OF CERTAIN LIABILITIES OF PARR TERMINAL COMPANY.

Application No. 14562.

Decided May 3, 1928.

TRANSFER—SECURITY ISSUES.—Parr Terminal Company authorized to transfer to Parr Terminal Corporation certain properties in Richmond, and the latter authorized to issue $25,000 of its common capital stock therefor; to assume indebtedness of $64,241, execute mortgage and exchange certain property with the city of Richmond.

Morrison, Hohfeld, Foerster, Shuman and Clark, by *Roland Foerster* and *W. L. Hollaway,* for Applicants.

BY THE COMMISSION.

OPINION

In this proceeding the Railroad Commission is asked to authorize the Parr Terminal Company to sell its properties in Richmond, including a lease between it and the city of Richmond to Parr Terminal Corporation, and to acquire and hold 2489 shares ($248,900 par value) of common stock of Parr Terminal Corporation.

The Parr Terminal Corporation asks permission to acquire the aforesaid properties, issue in part payment therefor 2489 shares of its common stock; issue at par for cash eleven shares of stock to its directors; to assume and agree to pay the indebtedness of Parr Terminal Company on February 28, 1928, to Rozella R. B. Gilmore amounting to $23,241 and to the American Trust Company in the amount of $41,000; to execute to Rozella R. B. Gilmore a mortgage or deed of trust (Exhibit H) to secure the payment of the $23,241 which is payable in annual installments of $5,000; and to transfer and convey to the city of Richmond the real property described in subparagraph (a) of paragraph XI of the petition, in exchange for the real property to be conveyed by the city of Richmond to Parr Terminal Corporation described in subparagraph (b) of paragraph XI above.

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It appears that the Parr Terminal Company is engaged in the business of a warehouseman and wharfinger, and of buying, selling and leasing industrial lands in and about the water front of the city of Oakland, and that the Parr Terminal Corporation is engaged in the business of a warehouseman and wharfinger and of buying, selling and leasing industrial lands in and about the water front of the city of Richmond. It is of record that during 1925 and 1926 the Parr Terminal Company negotiated with the city of Richmond for the purpose of securing a lease of certain lands owned by the city and known as the outer and inner harbor of the city of Richmond, together with that certain wharf and warehouse known as the "Municipal Wharf No. 1." These negotiations culminated in the execution of a lease between the city of Richmond and Parr Terminal Company, dated October 18, 1926, a copy of which lease is filed in this proceeding as Exhibit "C." Thereafter the lease was ratified, approved and confirmed by the State of California (1927 statutes and amendments, chapter 97, page 183). Subsequent to the enactment of the 1927 amendment to section 718 of the Civil Code of the State of California, the city of Richmond and the Parr Terminal Company made and entered into an extension of the lease dated August 15, 1927, by virtue of the terms of which an aggregate leasehold term of fifty years was provided for, and all of the terms and conditions of the original lease above referred to were ratified, approved and confirmed by the parties thereto. A copy of the extension of the lease is filed as Exhibit "D." There are also filed as Exhibits "E" and "F" copies of ordinances Nos. 591 and 603 of the city of Richmond authorizing the execution of the lease and the extension of the lease.

For the purpose of facilitating the management and control of the business of said company in the city of Richmond, the Parr Terminal Company has caused to be incorporated under the laws of the State of California Parr Terminal Corporation, having an authorized capital stock of $500,000 divided into 5000 shares of the par value of $100 each.

Applicant's petition contains detailed descriptions of the properties which Parr Terminal Company asks permission to transfer to Parr Terminal Corporation and also indicates which properties have been necessary and useful and will continue to be necessary and useful in the performance of the duties of a warehouseman and wharfinger. A description of the properties is attached hereto as Exhibit "A."

It is of record that on April 23d, bids were opened for the construction of terminal facilities on the above described property. The terminal will be built by the city of Richmond and Parr Terminal Corporation, each paying 50 per cent of the cost. The wharf will be about 900 feet in length, while the warehouse will be of concrete construction, 800

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feet in length and 150 feet wide, served by double tracks along the water's edge, and a depressed track on the land side.

To finance the construction of such terminal, pay indebtedness and for other purposes, the Parr Terminal Corporation will file an application for permission to issue $400,000 of bonds.

It occurs to us that the issue of the $248,900 of stock by Parr Terminal Corporation should in the main be considered in connection with this application for permission to issue the $400,000 of bonds. The real estate appraisal submitted in this proceeding reflects in part at least an increment in value due to the construction of the terminal facilities through the issue of bonds.

The order herein will authorize the Parr Terminal Corporation to transfer the properties described in Exhibit "A" attached hereto and will authorize the latter company to issue eleven shares of its capital stock to qualify its directors; and, further, to issue $25,000 of stock as part payment for the properties which it is herein authorized to acquire, and assume certain indebtedness and execute a mortgage or deed of trust. It will also authorize Parr Terminal Corporation to transfer to the city of Richmond the following described property:

Beginning at the intersection of the southerly line of lot 20, section 24, township 1 north, range 5 west, M. D. B. and M., with the easterly U. S. Government pierhead and bulkhead line, and running thence in direct lines as follows: N. 89° 55' 10" east along the aforesaid southerly line of lot 20, a distance of 235.514 feet; thence south 84° 32' 26" west, a distance of 234.478 feet to a point on aforesaid U. S. Government pierhead and bulkhead line; thence north 5° 27' 34" west along the said U. S. Government pierhead and bulkhead line, a distance of 22.077 feet to the point of beginning.

Being a portion of lot 20, section 24, township 1 north, range 5 west, M. D. B. and M., and containing .059 acre.

in exchange for the following properties:

Beginning at the intersection of the southerly line of lot 19, section 24, township 1 north, range 5 west, M. D. B. and M., with the westerly line of Tenth street and running thence in direct lines as follows: South 89° 55' 10" west along the southerly line of lots 19 and 20 aforesaid, section 24, a distance of 235.514 feet and thence north 84° 32' 26" east a distance of 234.478 feet to a point on the aforesaid westerly line of Tenth, thence south 5° 27' 34" east along the said westerly line of Tenth street a distance of 22.077 feet to the point of beginning.

Being a portion of lots 19 and 20, section 24, township 1 north, range 5 west, Mount Diablo base and meridian, containing .059 acre.

The reason for the desired exchange of property between Parr Terminal Corporation and the city of Richmond is in order to cause the boundary line between said properties to be perpendicular to the United States bulkhead and pierhead line.

It appears that there is now due on the property, which the Parr Terminal Company asks permission to transfer to the Parr Terminal Corporation, the sum of $64,241, of which sum $23,241 is payable to Rozella R. B. Gilmore, in installments of $5,000 per annum, and $41,000 is payable to the American Trust Company. The Parr

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Terminal Corporation asks permission to execute a mortgage or deed of trust to secure the payment of the $23,241. A copy of its proposed mortgage or deed of trust is filed in this proceeding as Exhibit "H." We have examined the same and find it to be in satisfactory form.

The authority herein granted to issue stock, as stated, is not a final determination of the amount of stock which the Parr Terminal Corporation may issue to pay in part for the properties which it will acquire from the Parr Terminal Company. Further consideration will be given to the issue of additional stock after a hearing has been had on the company's application to issue bonds.

ORDER.

Parr Terminal Company and Parr Terminal Corporation having asked permission to transfer and acquire properties, issue stock, assume indebtedness and execute a mortgage, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by the issue of $26,100 of stock of Parr Terminal Corporation, and the assumption of indebtedness by that corporation in the sum of $64,241, is reasonably required, and that the expenditures being authorized are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should at this time be granted to the extent indicated in this order; therefore,

It is hereby ordered, as follows:

1. Parr Terminal Company may transfer to the Parr Terminal Corporation the properties described in Exhibit "A" attached hereto.

2. Parr Terminal Corporation may issue to its directors eleven shares of its capital stock at par for cash, and shall use the proceeds obtained from the sale of the stock to pay organization expenses.

3. Parr Terminal Corporation may issue at not less than par, on or before September 1, 1928, $25,000 par value of its common capital stock in part payment for the properties described in Exhibit "A" attached hereto.

4. Parr Terminal Corporation may assume indebtedness in the sum of $64,241 as part payment for the properties described in Exhibit "A" attached hereto.

5. Parr Terminal Corporation may execute a mortgage or deed of trust substantially in the same form as the mortgage or deed of trust filed in this proceeding as Exhibit "H," provided that the authority herein granted to execute said mortgage or deed of trust is for the purpose of this proceeding only, and is granted in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage or deed of trust

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as to such other legal requirements to which said mortgage or deed of trust may be subject.

6. Parr Terminal Corporation may transfer to the city of Richmond the properties described in the foregoing opinion on condition that the city of Richmond transfer to the Parr Terminal Corporation the properties described in said opinion.

7. The authority herein granted will become effective when the Parr Terminal Corporation has paid the fee prescribed by section 57 of the Public Utilities Act.

8. Parr Terminal Company may acquire and hold the stock of Parr Terminal Corporation, the issue of which is herein authorized.

9. Parr Terminal Corporation shall file with the Commission a report or reports, as required by the Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

10. Parr Terminal Corporation shall file, within thirty days after it acquires the properties herein described, a certified copy of the deed and of any and every other instrument under which it acquires and holds title to said properties.

Dated at San Francisco, California, this third day of May, 1928.

EXHIBIT A.

Properties Which Parr Terminal Company Will Transfer to Parr Terminal Corporation.

1. That certain lease by and between the city of Richmond and Parr Terminal Company, dated October 18, 1926, above referred to, which lease was recorded in the office of the county recorder of Contra Costa County on the 26th day of July, 1927, in liber 14 of leases, page 451; and that certain extension of lease by and between the city of Richmond and Parr Terminal Company, dated August 15, 1927, which extension of lease was recorded in the office of the county recorder of Contra Costa County, State of California, on the 17th day of August, 1927, in liber 14 of leases, page 498.

2. All of those certain lots, pieces and parcels of land situated in county of Contra Costa, State of California, and bounded and described as follows, to wit:

PARCEL I.

Commencing at a point on the northern boundary line of state tide land lot 30 in section 24, township 1 north, range 5 west, Mount Diablo base and meridian, distant thereon east 0.756 chains from the northwestern corner of the said lot 30, said point being the southeastern corner of the certain 0.281-acre tract of land heretofore conveyed by the city of Richmond to Bay Counties Land Co. by deed dated September 22, 1916, recorded February 13, 1918, in volume 315 of deeds, at page 37, Contra Costa County records, and running thence along the said northern boundary line of the said lot 30 and the northern boundary line of state tide land lot 29, section 24, township and range aforesaid, west 473.29 feet to the intersection of said northern line of lot 29 with the eastern United States pierhead and bulkhead line of the inner harbor of the city of Richmond; thence along said pierhead and bulkhead line, south 5° 27′ 35″ east 986.70 feet; thence east 471.84 feet to the western line of the proposed extension of Tenth street in the city of Richmond, and thence along the last said line, north 5° 27′ 35″ west 986.70 feet to the point of commencement. Containing 10.657 acres, and being a portion of state tide land lots 29 and 30, in section 24, township 1 north, range 5 west, Mount Diablo base and meridian.

PARCEL II.

Commencing at the northeastern corner of state tide land lot 18 in section 24, township 1 north, range 5 west, Mount Diablo base and meridian, and running thence along the northern boundary line of said lot 18, west 194.01 feet to its intersection with the proposed southern extension of the western line of Fourteenth street, as it now exists in the city of Richmond; thence along said extension, south 128 feet to the point of commencement for this description, and running thence from the last said point of commencement, west 1092.05 feet to a point on the eastern line of the proposed extension southerly of Tenth street in the city of Richmond; thence along said eastern line of Tenth street, south 5° 27′ 35″ east 972.28 feet; thence east 999.53

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feet to a point on the proposed extension of the aforesaid western line of Fourteenth street, and thence along the last said line 967.96 feet to the last said point of commencement.

Containing 23.281 acres, and being portions of state tide land lots 18 and 19 in section 24, township 1 north, range 5 west, Mount Diablo base and meridian.

PARCEL III.

Commencing at the northeastern corner of state tide land lot 18 in section 24, township 1 north, range 5 west, Mount Diablo base and meridian, and running thence along the northern boundary line of said lot 18, west 114.01 feet to its intersection with the proposed southern extension of the eastern line of Fourteenth street, as it now exists in the city of Richmond; thence along said extension, south 128 feet to the point of commencement for this description, and running thence from the last said point of commencement, east 68.01 feet; thence south 967.96 feet; thence west 68.01 feet to a point on the proposed extension of the aforesaid eastern line of Fourteenth street, and thence along the last said line north 967.96 feet to the last said point of commencement.

Containing 1.511 acres, more or less, and being a portion of state tide land lot 18 in section 24, township 1 north, range 5 west, Mount Diablo base and meridian.

PARCEL IV.

First: Beginning at a mound of earth established by the U. S. township survey on range line between ranges 4 and 5 west and township 1 north, 1815.00 feet, south of corner of sections 13, 18, 19 and 24; thence north 100.32 feet to segregation line as run by J. C. Lacroz in S. P. R. survey; thence south 79½° east 138.60 feet; south 60½° east 1188 feet to station; south 35½° east 679.80 feet; south 58° east 1270.50 feet; south 99 feet to bay of San Francisco; thence north 79° west 635.58 feet; north 71° west 1177.44 feet; thence north 36° west 247.50 feet; south 65½° west 297 feet; north 73¾° west 510.18 feet; north 1135.20 feet to point of beginning; containing 42.99 acres, more or less; being the same land described in that certain grant from State of California to Jacob M. Tewksbury, dated December 20, 1864, and recorded on the 15th day of June, 1872, in volume 1 of patents at page 337, records of said county of Contra Costa; and

Second: Beginning at a granite monument set on the east line of section 24 in township 1 north, range 5 west, distant 1980 feet south of corner of sections 13, 18, 19 and 24; thence along the east line of section 24, north 192.72 feet to the inner line of salt marsh; thence along the same north 70½° west 566.28 feet to post marked 36; thence north 83¾° west 124.08 feet to line between lots 16 and 15; thence on line between lots 16 and 15 south 1057.98 feet; thence east 660 feet to the east line of section 24; thence on east line of section 24 north 660 feet to the granite monument, the place of beginning; being a tract of salt marsh designated as lot 16 in section 24 of said township, containing an area of 14.64 acres; subject, however, to the right of way for sewer purposes across the above described lot 16 heretofore granted by Berkeley Water Front Company, a corporation, to the city of Richmond, a corporation, as provided for in the deed from David F. Selby to Rozella R. B. Gilmore, dated February 11, 1921, and recorded February 16, 1921, in volume 376 of deeds, page 321, records of Contra Costa County.

Excepting therefrom the following described parcel of land:

Beginning at the southwest corner of state tide land lot No. 16; thence north along the west line of said state tide land lot No. 16, a distance of 75.00 feet to a point; thence north 46° 38′ east, a distance of 72.68 feet to a point; thence on the arc of a curve concave to the right, having a radius of 392.245 feet (tangent to last described curve at the last mentioned point) an arc distance of 205.38 feet to point of compound curve; thence on a curve concave to the right having a radius of 2301.876 feet (the tangent at last described curve at the last mentioned point bears north 76° 38′ east) an arc distance of 72.71 feet to point of compound curve; thence on a curve concave to the right having a radius of 392.245 feet (the tangent to last described curve at the last mentioned point bears north 78° 26′ 35″ east) an arc distance of 79.12 feet to a point; thence east (tangent to last described curve at the last mentioned point) parallel to and distant 245.0 feet at right angles northerly from the south line of state tide land lot No. 16, and lots 9 and 10 of swamp and overflowed land survey No. 149, a distance of 1187.38 feet to a point; thence on a curve concave to the left having a radius of 357.245 feet (tangent to last described course at the last mentioned point) an arc distance of 234.03 feet to a point; thence north 52° 28′ east (tangent to last described curve at the last mentioned point) a distance of 247.48 feet to a point; thence on a curve concave to the right having a radius of 407.245 feet (tangent to last described course at the last mentioned point) an arc distance of 210.27 feet to a point in the easterly boundary line of aforesaid swamp and overflowed land survey No. 149; thence south 27° 12′ 30″ west along said easterly line of swamp and overflowed land survey No. 149, a distance of 43.86 feet to a point; thence on a curve concave to the left having a radius of 372.245 feet (the tangent to said curve at the last mentioned point bears south 78° 09′ 38″ west) an arc distance of 166.93 feet to a point; thence south 52° 28′ west (tangent to last described curve at the last mentioned point) a distance of 22.09 feet to a point; thence on the arc of a curve concave to the left having a radius of 372.245 feet (tangent to last described course at the last mentioned point) an arc distance of 53.06 feet to a point; thence south 44° 18′ west (tangent to last described curve at the last mentioned point) a distance of 174.91 feet to a point; thence on a curve concave to the right, having a radius of 328.637 feet (tangent to last described course at the last mentioned point) an arc distance of 262.13 feet to a point; thence west (tangent to last described curve at the last mentioned point) parallel to and distant 169.0 feet at right angles northerly from the south line of lots 9 and 10 of swamp and overflowed land survey No. 149 and state tide land lot 16, a distance of 1404.36 feet to a point; thence on a curve concave to the left having a radius of 372.245 feet (the tangent to said curve at the last mentioned point bears south 67° 38′ 05″ west) an arc distance of 195.62 feet to a point of compound curve; thence on a curve to the

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left having a radius of 276.843 feet (the tangent to said curve at the last mentioned point bears south 37° 31' 30" west) an arc distance of 60.37 feet to the point of beginning, containing an area of 3.00 acres, more or less, being the same land described in that certain deed from Parr Terminal Company to Southern Pacific Company, dated June 3, 1927, and recorded July 19, 1927, in volume 88 of official records of Contra Costa County, page 276.

3. That certain option to purchase 11.514 acres of land situated in the county of Contra Costa, State of California, and particularly described as follows:

Commencing at the section corner common to sections 24 and 25 and sections 19 and 30, township 1 north, ranges 4 and 5 west, Mount Diablo base and meridian, said point of beginning also being the northeastern corner of state tide land lot 1 in section 25, township 1 north, range 5 west, Mount Diablo base and meridian, and running thence along the line dividing said sections 25 and 30 south 760 feet; leaving said section line and running thence west 660 feet to a point on the westerly boundary line of said lot 1; thence along the westerly boundary line of said lot 1 north 760 feet to the northwest corner of said lot 1; thence along the northern boundary line of said lot 1 east 660 feet to the point of commencement.

Being a portion of state tide land lot 1, section 25, township 1 north, range 5 west, Mount Diablo base and meridian.

from Richmond Belt Railway Company, on or before July 11th, 1928, at and for the sum of three thousand two hundred four and 35/100 dollars ($3,204.35).

4. That certain business, in its entirety, and as a going concern, conducted by Parr Terminal Company in connection with said leases and property above described, together with all plants, facilities, accounts receivable and good will and other property and assets of every kind and description used in reference thereto or in connection therewith.

DECISION No. 19723.

IN THE MATTER OF THE APPLICATION OF SOUTH COAST GAS COMPANY, A CORPORATION, FOR A PERMIT TO EXERCISE FRANCHISE RIGHTS, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR A PERMIT TO SELL ITS STOCK.

Application No. 13871.

Decided May 8, 1928.

SECURITY ISSUES.—**South Coast Gas Company authorized to issue to C. E. Flint $59,700 of preferred stock, $47,700 of common stock and $751.19 in cash. Decision No. 18594 (30 C. R. C. 163) modified.**

BY THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

The Railroad Commission in Decision No. 18594, dated July 8, 1927, as modified, made its order declaring that public convenience and necessity require and will require South Coast Gas Company to construct and operate a gas plant in the city of Oceanside, and authorizing the company to issue and sell for cash, at not less than par, $50,000 of common capital stock and $63,500 of 7 per cent cumulative preferred stock and to assume the payment of a $2,000 note. The order of the Commission permitted the company to use, if necessary, an amount not exceeding 15 per cent of the par value of stock sold to pay the cost of selling said stock, including commissions and other expenses incident to such sale, but provided that the remainder of the proceeds and such portion of the 15 per cent not needed for the purposes mentioned, should be deposited with a bank or banks only for such purposes as the Commission might authorize in supplemental orders.

On April 23, 1928, applicant filed a supplemental petition in this matter, alleging that its gas plant and distributing system has been completed, with the exception of a few minor pieces of apparatus, and

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that its capital investment as of March 31, 1928, is $105,347.88. It reports its assets and liabilities in its supplemental petition, as of the same date, as follows:

Assets.

Fixed capital		$105,347 88
Cash on hand		516 50
Cash deposit		5,315 00
Accounts receivable		6,616 62
Materials and supplies		4,523 91
Prepayments		61 36
Deficit		1,099 65
Total assets		$123,480 92

Liabilities.

Capital stock:		
Preferred	$3,800 00	
Common	2,300 00	
		$6,100 00
Notes payable		104,789 18
Accounts payable		8,960 37
Accruals		3,631 37
Total liabilities		$123,480 92

It appears that only $6,100 of stock has been sold and that the proceeds, $5,315, have been deposited in special bank accounts. It is reported that in financing the cost of the construction work the company issued to E. A. MacGillivray and Curtis E. Flint, its short term notes, which, with accrued interest, aggregate, as of April 1, 1928, $106,081.19. In addition, the company has outstanding the $2,000 note, the payment of which was assumed by it pursuant to the authority granted by Decision No. 18584.

The note originally issued to E. A. MacGillivray, amounting to $83,323.48, has been assigned to Curtis E. Flint. The supplemental petition shows that Curtis E. Flint is willing to release the corporation from payment of the indebtedness of $106,081.19 and to assume and pay the indebtedness of $2,000 in exchange for $751.19 in cash and the authorized but unissued stock, to wit: $59,700 of preferred and $47,700 of common, a total of $107,400. The company therefore asks permission to deliver the $107,400 of stock and to use $751.19 of the proceeds obtained from the stock heretofore issued and sold for this purpose. It further asks permission to use the remainder of the proceeds, $4,563.81, in the conduct of its business. It has not, however, furnished definite information as to the use of this balance, and this part of the supplemental request will be held in abeyance.

The Commission has given consideration to the supplemental petition and is of the opinion that it should be granted, as herein indicated and provided; therefore,

It is hereby ordered, that the order in Decision No. 18594, dated July 8, 1927, as modified, be and it hereby is further modified so as to

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permit South Coast Gas Company to issue and deliver $59,700 of the preferred stock and $47,700 of the common stock authorized to be issued and sold by said Decision No. 18594, together with the cash sum of $751.19 received from the sale of the stock now outstanding, to Curtis E. Flint, in consideration of his releasing applicant from any and all obligation to pay the notes, issued to E. A. MacGillivray and to himself, and of paying the $2,000 note outstanding and secured by a deed of trust, all of which are referred to herein.

It is hereby further ordered, that the order in Decision No. 18594, dated July 8, 1927, as modified, shall remain in full force and effect, except as modified by this second supplemental order.

Dated at San Francisco, California, this eighth day of May, 1928.

DECISION No. 19731.

CALIFORNIA WAREHOUSEMEN'S ASSOCIATION

vs.

CHARLES F. KANE, DOING BUSINESS UNDER THE FICTITIOUS NAME OF CHARLES F. KANE & CO.

Case No. 2376.

IN THE MATTER OF THE INVESTIGATION ON THE COMMISSION'S OWN MOTION, INTO THE PRACTICES, RATES, RULES, REGULATIONS AND OPERATIONS OF CHARLES F. KANE, ENGAGED IN THE BUSINESS OF CONDUCTING PUBLIC UTILITY WAREHOUSES FOR THE STORAGE AND HANDLING OF AUTOMOBILES AND CERTAIN AUTOMOBILE ACCESSORIES, UNDER THE FICTITIOUS NAME AND STYLE OF CHARLES F. KANE & CO.

Case No. 2452.

Decided May 8, 1928.

DISCRIMINATION—RATES—DEVIATION FROM SCHEDULES.—Chas. F. Kane, operating a public utility warehouse in San Francisco, ordered to cease and desist from charging, demanding, collecting or receiving any charges greater or less or different from those shown in tariff on file.

FINES AND PENALTIES.—Defendant warehouseman having wilfully, deliberately and knowingly violated section 17 (*b*) of the Public Utilities Act by charging rates different from those lawfully on file, the attorney for the Commission was directed to bring an action in the superior court for the recovery of penalties.

Devlin and Brookman, by *Douglas Brookman*, for Complainant.
Young and Hudson, by *R. C. Hudson*, for Defendant.

BY THE COMMISSION.

OPINION

Complainant is a voluntary association composed of the owners and operators of approximately 80 warehouses in California, and its complaint alleges, in effect, that the charges assessed and collected by defendant from one F. B. Mansfield for the unloading, storage and

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handling of six Gardner passenger automobiles during the period extending from May 16, 1927, to May 25, 1927, inclusive, were less than those set forth in defendant's Tariff C. R. C. No. 2, lawfully on file with this Commission. It is further alleged on information and belief that defendant has been in the past, and is now, unlawfully and unjustly discriminating against certain dealers and firms and unduly and unlawfully extending a preference to other dealers and firms in violation of the constitution of this state and the provisions of the Public Utilities Act, and that the alleged unlawful acts of defendant have injured the stability and business of, and are prejudicial to, warehouses in competition with defendant.

The answer of defendant admits that the unloading and storage charges assessed on the said automobile during the period, May 16th to May 25th, inclusive, were lower than the rates lawfully on file with the Commission in Tariff C. R. C. No. 2, but denies that the handling charges were unlawfully assessed. He further denies that the charges assessed have created any unlawful discrimination, preference or prejudice.

A public hearing in Case No. 2376 was held before Examiner Geary at San Francisco September 30, 1927, and from the facts there developed the Commission instituted an investigation on its own motion into the practices, rates, rules, regulations and operations of defendant (Case No. 2452).

The issues in both proceedings being similar, Cases Nos. 2376 and 2452 were heard jointly on January 5 and 20, 1928, and submitted on the latter date. Both proceedings will be disposed of in this decision. Defendant and respondent being the same, will be hereafter referred to as defendant.

Subsequent to our order in Case No. 2452 instituting the general investigation, a representative of the department of finance and accounts of the Commission was instructed to make a detailed check of the charges assessed and collected by defendant from all automobile firms and dealers for the handling and storage of automobiles during the period extending from January 1, 1927, to June 30, 1927. This report was made and at the hearing held January 5, 1928, was introduced in evidence as Exhibit No. 6.

Defendant's warehouse is located at 925 Brannan street, San Francisco. His public utility business, as shown by the tariffs lawfully on file with this Commission, is devoted exclusively to the storage and handling of automobiles and motor trucks. From January 1 to May 28, 1927, both dates inclusive, the lawfully applicable charges for handling and storage of automobiles and trucks and the rules and regulations appertaining thereto were published in Tariff C. R. C.

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No. 2. Subsequent to the latter date the lawfully applicable tariff was C. R. C. No. 3, this issue having superseded C. R. C. No. 2, effective May 29, 1927.

From January 1, 1927, to May 28, 1927, both dates inclusive, the following charges were lawfully applicable in Tariff C. R. C. No. 2:

Unloading:	
Passenger automobiles—	
Wheel base 127 inches or less	$1 25 per car
Wheel base over 127 inches	1 75 per car
Trucks and delivery wagons—	
Capacity 1 ton or less	1 75 per car
Capacity over 1 ton	2 75 per car

Storage:		
Passenger automobiles—	15 days or less	Over 15 days but not over 30 days
Wheel base 120 inches or less	$1 75 per car	$3 25 per car
Wheel base over 120 inches	2 75 per car	4 75 per car
Trucks and delivery wagons—		
Capacity 1 ton or less	2 75 per car	4 75 per car
Capacity over 1 ton but not over 2 tons	3 25 per car	5 75 per car
Capacity over 2 tons but not over 3½ tons	3 75 per car	7 25 per car
Capacity over 3½ tons	5 75 per car	8 75 per car

Subsequent to May 28, 1927, the following charges under Tariff C. R. C. No. 3 prevailed:

Unloading:	
Passenger automobiles—	
Regardless of size	$1 25 per car
Trucks and delivery wagons—	
Capacity 2 tons or less	1 75 per car
Capacity over 2 tons	2 75 per car

Storage:		
Passenger automobiles—	15 days or less	Over 15 days but not over 30 days
Regardless of size	$1 75 per car	$3 25 per car
Trucks and delivery wagons—		
Capacity 1 ton or less	2 75 per car	4 75 per car
Capacity over 1 ton but not over 2 tons	3 25 per car	5 75 per car
Capacity over 2 tons but not over 3½ tons	3 75 per car	7 25 per car
Capacity over 3½ tons	5 75 per car	8 75 per car

The Commission's Exhibit No. 6, heretofore referred to, and from which we hereby find the following facts to be true, shows that during the period extending from January 1, 1927, to May 28, 1927, inclusive, defendant assessed and collected charges less than the lawfully applicable charges shown in Tariff C. R. C. No. 2 from the following firms and dealers: Del Tredici and Son, undercharged $5 for unloading ten Hudson passenger automobiles having a wheel base of 127¾ inches; Locomobile Company of America, undercharged $1 for unloading two Locomobile passenger automobiles having a wheel base of 142 inches; F. B. Mansfield, undercharged 50 cents for unloading one Gardner

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passenger automobile having a wheel base of 130 inches; Western Motors Company, undercharged $6 for unloading twelve Pontiac delivery trucks having a capacity of one-half ton each, and undercharged $11 for storing eight trucks of the same make and capacity; Don Lee, Inc., undercharged $9.50 for storing nine LaSalle passenger automobiles having wheel bases of 125 or 134 inches; General Motors Truck Company, undercharged $56 for storing twelve G. M. C. trucks having capacities ranging from 2½ tons to 5 tons; F. B. Mansfield, undercharged $3 for storing three Gardner passenger automobiles having wheel bases of 122 and 130 inches; and Robert A. Smith, Inc., undercharged $18 for storing ten Chevrolet delivery trucks having capacities of one-half or one ton.

Exhibit No. 6 also shows that from May 29 to June 30, 1927, the following firms were either charged a lesser or greater amount than the lawful charges shown in Tariff C. R. C. No. 3: Don Lee, Inc., overcharged $6 for unloading twelve Cadillac passenger automobiles, and $18.50 for storing fifteen Cadillac passenger automobiles, all having wheel bases of 132 or 138 inches; Pierce-Arrow Pacific Sales Company, overcharged $11 for unloading twenty-two Pierce-Arrow passenger cars having wheel bases of 130 or 138 inches; Rolls-Royce of America, overcharged $1.50 for unloading three Rolls-Royce passenger cars; Western Motors Company, undercharged $1.50 for unloading three Pontiac delivery trucks having a capacity of one-half ton each; General Motors Truck Company, overcharged $7.50 for storing fifteen G. M. C. trucks and undercharged $1 for storing two trucks of the same make, having capacities of from one ton to two and one-half tons; Western Motors Company, undercharged $6.50 for storing three Pontiac delivery trucks having a capacity of one-half ton each, and Howard Automobile Company, undercharged $316.50 for storing 1266 Buick passenger automobiles having wheel bases of 115, 120 or 128 inches. In connection with the Howard Automobile Company, defendant frankly admitted that he had not assessed and collected the lawful rates on file, and that because he believed that the Howard Automobile Company was entitled to a preferential rate or rates, he had always given same to it.

Following the hearing held on January 3, 1928, a Commission representative and a representative of defendant together rechecked the details contained in Commission's Exhibit No. 6, and at the last hearing it was stipulated that the figures and data contained therein were correct.

From the foregoing it is seen that defendant has committed numerous flagrant violations of the Public Utilities Act which we can not overlook. There are about twenty of these violations which are not now barred by the statute of limitations that appear to us to have been committed wilfully, deliberately, and knowingly in violation of section 17 (*b*) of the

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Public Utilities Act and without justification or excuse, whatever. We believe that defendant should be penalized for these offenses as a means of punishment and to warn him that future violations of the act will not be countenanced by us.

The attorney for the Commission will be instructed and directed to bring an action in the name of the people of the State of California in the superior court of the State of California in and for the city and county of San Francisco for the recovery of penalties for the twenty violations above referred to, which are

1. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to August 12, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Howard Automobile Company the sum of $1,467 as payment for the storing for said Howard Automobile Company of 667 Buick passenger automobiles, resulting in a charge in the aggregate of at least $166.75 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

2. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to November 5, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Don Lee, Inc., the sum of $21 as payment for the unloading for said Don Lee, Inc., of twelve Cadillac passenger automobiles, resulting in a charge in the aggregate of $6 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

3. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to July 25, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Don Lee, Inc., the sum of $17.25 as payment for the storage for said Don Lee, Inc., of nine La Salle passenger automobiles, resulting in a charge in the aggregate of $9.50 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

4. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 11, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Del Tredici and Son the sum of $5 as payment for the unloading for said Del Tredici and Son of four Hudson automobiles, resulting in a charge in the aggregate of $2 less than that lawfully applicable under the provisions of defendant's Tariff No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

5. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to July 23, 1927 both dates inclusive, in the city and county of San Francisco, State of California, from Locomobile Company of California, the sum of $2.50 as payment for the unloading for said Locomobile Company of two Locomobile passenger automobiles, resulting in a charge in the aggregate of $1 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

6. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 27, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from F. B. Mansfield the sum of $1.25 as payment for the unloading for said F. B. Mansfield of one Gardner passenger automobile, resulting in a charge in the aggregate of 50 cents less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

7. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 27, 1927, both dates inclusive, in the city and county of

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San Francisco, State of California, from F. B. Mansfield the sum of $5.25 as payment for the storing for said F. B. Mansfield of three Gardner passenger automobiles, resulting in a charge in the aggregate of $3 less than that lawfully applicable under the provisions of the defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service, in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

8. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to June 16, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of $5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of three Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of $1.50 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service, in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

9. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to June 21, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of $5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of three Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of $1.50 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service, in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

10. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to June 30, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of $3.50 for the unloading for said Pierce-Arrow Pacific Sales Company of two Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of $1 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service, in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

11. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to June 30, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of $5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of three Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of $1.50 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

12. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to July 23, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of $5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of three Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of $1.50 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

13. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to July 15, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from General Motors Truck Company the sum of $48.75 as payment for the storing for said General Motors Truck Company of fifteen G. M. C. trucks, resulting in a charge in the aggregate of $7.50 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

14. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to August 18, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Rolls Royce of America the sum of $5.25 as payment for the unloading for said Rolls Royce of America of three Rolls Royce

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passenger automobiles, resulting in a charge in the aggregate of $1.50 greater than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 3, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

15. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 14, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Western Motors Company the sum of $6.50 as payment for the storing for said Western Motors Company of two Pontiac delivery trucks, resulting in a charge in the aggregate of $3 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

16. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 23, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Western Motors Company the sum of $3.25 as payment for the storing for said Western Motors Company of one Pontiac delivery truck, resulting in a charge in the aggregate of $1.50 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

17. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 21, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Western Motors Company the sum of $6.50 as payment for the storing for said Western Motors Company of two Pontiac automobile delivery trucks, resulting in a charge in the aggregate of $3 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

18. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 14, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Western Motors Company the sum of $2.50 as payment for the unloading for said Western Motors Company of two Pontiac delivery trucks, resulting in a charge in the aggregate of $1 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

19. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 21, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Western Motors Company the sum of $2.50 as payment for the unloading for said Western Motors Company of two Pontiac delivery trucks, resulting in a charge in the aggregate of $1 less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

20. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 23, 1927, both dates inclusive, in the city and county of San Francisco, State of California, from Western Motors Company the sum of $1.25 as payment for the unloading for said Western Motors Company of one Pontiac delivery truck, resulting in a charge in the aggregate of 50 cents less than that lawfully applicable under the provisions of defendant's Tariff C. R. C. No. 2, the only lawful and effective tariff applicable for such service in violation of section 17 (*b*) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

Defendant should be ordered to immediately cease and desist from charging, demanding, collecting, and/or receiving any charges for the unloading and storage of automobiles, automobile trucks or delivery trucks, and other commodities greater or less or different than those shown in his Tariff C. R. C. No. 3 now lawfully on file with this Commission.

An order in conformity with the above will be entered.

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ORDER.

The cases as above numbered and entitled having been duly heard and submitted, the Commission now being fully advised, and basing the following order on the findings of fact and conclusions contained in the opinion preceding this order, now, therefore,

It is hereby ordered, that Charles F. Kane, doing business under the fictitious name and style of Charles F. Kane & Co., be and he is hereby ordered to immediately cease and desist, and thereafter to abstain from charging, demanding, collecting or receiving any charges for the unloading and storage of automobiles, automobile trucks or delivery trucks, and other commodities greater or less or different than those shown in his Tariff C. R. C. No. 3, now lawfully on file with this Commission.

It is hereby further ordered, that the attorney for this Commission be and he is hereby directed to commence an action in the name of the People of the State of California, in the superior court of the State of California, in and for the city and county of San Francisco, for the recovery of penalties for the twenty violations set forth in the opinion preceding this order.

For all other purposes the effective date of this order shall be five days from the date hereof.

Dated at San Francisco, California, this eighth day of May, 1928.

DECISION No. 19733.

WESTERN CATTLE MARKETING ASSOCIATION, J. A. BICKFORD, F. H. SCOTT

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 2424.

Decided May 9, 1928.

RATES—RAILROAD.—Complaint alleging rates for transportation of feeder cattle to be unreasonable and discriminatory dismissed.

RATES—REASONABLENESS—COMPARISONS.—The fact that lower rates are in effect in certain territory not shown to be competitive does not warrant a finding that the assailed rates are discriminatory.

RATES—RAILROAD—TRANSIT PRIVILEGES.—"Rates to feeder stations and return to point of origin less than twice the one-way rates fall under the category of transit privileges, and neither this Commission nor the Interstate Commerce Commission will ordinarily require carriers to extend feeding in transit privileges unless it be upon proof of unlawful discrimination, and each case must be determined according to the facts, circumstances and conditions presented."

Edson Abel and *John Curry*, for Complainants.
J. E. Lyons and *A. L. Whittle*, for Defendant.
Edson Abel, for California Farm Bureau Federation, Intervener.
John Curry, for California Cattlemen's Association and California Wool Growers' Association, Interveners.

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BY THE COMMISSION.

OPINION.

Complainants are two individuals and a corporation engaged in the live stock business. By complaint filed October 5, 1927, they allege that the rates applicable on feeder cattle, carloads, between White Rock, Folsom and Roseville on the one hand and Truckee on the other hand are unreasonable, unjustly discriminatory and unduly prejudicial.

Reasonable rates for the future are sought. The rates will be stated in amounts per 36-foot car.

A public hearing was held at San Francisco January 25, 1928, before Examiner Geary, and the case having been duly submitted is now ready for our opinion and order.

White Rock and Folsom are on the Placerville branch of the Southern Pacific, 29 and 23 miles from Sacramento, and 143 miles and 137 miles, respectively, from Truckee. Roseville is on the main line 18 miles east of Sacramento and 102 miles west of Truckee.

Complainants aver that the local rates in each direction on their feeder cattle are unreasonable, discriminatory and prejudicial by comparison with the round-trip rates on feeder cattle in effect between points in the state of Nevada, also from points in Nevada to California and return to Nevada, which rates are lower than twice the one-way rates. They testified that cattle moved annually to Truckee for feeding and fattening during the summer months, that from 20 to 25 per cent of these cattle are not returned to the point of origin but are sold either for local consumption or for shipping to San Francisco, and that during the past few years the greater portion of the cattle from White Rock have been driven to and from the summer ranges because this method proved less expensive than shipping by railroad. Exhibits were introduced showing the number of head of live stock in certain states, the volume in carload movements over defendant's line during the years 1921 to 1926, inclusive, and comparative statements of rates on feeder cattle and feeder sheep, together with round trip rates on feeder cattle between the various points in Nevada and California. None of the rates set forth in the exhibits are applicable in the territory under attack, and although the earnings are lower per car mile they afford no material proof in determining the issues in this proceeding.

Witness for defendant introduced an exhibit illustrative of the physical characteristics of the territory between White Rock and Truckee and testified that the operating conditions over its lines between these points are very severe due to the fact that there is an ascending grade for about 80 per cent of the distance, reaching a maximum of 2.6 per cent at Blue Canyon, which requires two locomotives to handle trains consisting of from 40 to 50 cars each, whereas the same motive power will handle trains varying from 120 to 150 cars each on level track.

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A witness for defendant testified that the round trip feeder cattle rates applicable between points in Nevada and between Nevada and California were established many years ago on a very low basis in order to meet an emergency existing at that time, the stockmen being unable to obtain feed in the Nevada territory and losing large numbers of cattle due to the severe drought prevailing during that particular season.

The record shows that in recent years most of the stock moved from Nevada to California under the round trip rates did not return to Nevada as originally contemplated but was shipped direct to markets from the California feeding grounds. There has been a very light movement under the round trip rates for many years past and no movement at all during the year ending June 30, 1927. Practically all of the interstate rates have recently been canceled. The one-way rates on feeder cattle between Truckee on the one hand, and on the other Roseville, Folsom and White Rock, are $45, $54.50 and $49.50, respectively. The two former are standard distance rates, employed by all large railroads in California, and these particular rates are shown in section D of Southern Pacific Company's Tariff 645-D, C. R. C. 3118; and the White Rock rate is a specific commodity rate applicable in each direction as shown in item 1220 of the same tariff.

The usual basis for constructing rates on feeder cattle in California is 85 per cent of the contemporaneously applicable rates on fat stock. A similar basis was prescribed by the Interstate Commerce Commission, in *American National Livestock Association* vs. *Southern Pacific Company*, 26 I. C. C. 37 and 30, I. C. C. 438, and this basis has been observed in making the rates between Roseville and Folsom on the one hand and Truckee on the other hand; however, the feeder cattle rate between Truckee and White Rock, the point where the largest number of head of live stock originates, is 76.8 per cent of the fat cattle rate, said rate being $64.50. The fact that lower rates were in effect in certain territory not shown to be competitive does not warrant a finding that the assailed rates are discriminatory. No evidence with respect to a competitive situation is disclosed by the record, and the allegations of unjust discrimination and prejudice are not sustained.

Rates to feeder stations and return to point of origin less than twice the one-way rates fall under the category of transit privileges, and neither this Commission nor the Interstate Commerce Commission will ordinarily require carriers to extend feeding in transit privileges unless it be upon proof of unlawful discrimination, and each case must be determined according to the facts, circumstances and conditions presented. There is no showing that the rates in and of themselves are unreasonable.

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Upon all the facts of record we find that the rates at issue are not shown to be either unreasonable, unjustly discriminatory or unduly prejudicial. The complaint will be dismissed.

ORDER.

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this ninth day of May, 1928.

DECISION No. 19735.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA TRANSIT COMPANY, A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSOLIDATE CERTAIN OPERATIVE RIGHTS AND ESTABLISH NEW RATES, RULES AND REGULATIONS GOVERNING THE TRANSPORTATION OF PERSONS, BAGGAGE AND EXPRESS IN CONNECTION WITH THE OPERATION BETWEEN HANFORD AND CORCORAN ACQUIRED FROM JOSEPH MILLER UNDER DECISION No. 16093.

Application No. 12658.

Decided May 9, 1928.

AUTOMOTIVE TRANSPORTATION—CONSOLIDATION.—California Transit Company authorized to consolidate automotive rights acquired from J. Miller between Hanford and Corcoran, and Fresno and Lemoore with present operative rights, and to adopt zone basis of express rates.

BY THE COMMISSION.

OPINION.

This is an amended and supplemental application of the California Transit Company, a corporation, for authority to consolidate and unify all of the operative rights acquired from Joseph Miller with the present unified transportation system of applicant and in the operation thereof to adopt the rules and regulations governing the transportation of persons, express and baggage and the zone basis of express rates, as authorized in Application No. 11005, Decision No. 18107, dated March 28, 1927.

The operative rights of Joseph Miller for the transportation of passengers and express between Fresno, Hanford, Visalia and Lemoore and intermediate points and between Hanford and Corcoran exclusive of local service between Fresno and Fowler were acquired by the California Transit Company in Application No. 12566, Decision No.

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16093, dated March 8, 1926. The restriction between Fresno and Fowler was the result of a reservation due to competition by the Valley Transit Company at the time an exchange of operative rights was authorized in Application No. 9849, Decision No. 13692, dated June 12, 1924. However, in Application No. 10687, Decision No. 14881, May 2, 1925, the California Transit Company acquired the operative rights of the Valley Transit Company, which included the local service between Fresno and Fowler, therefore there is now no further need for the prohibition as to the carrying of passengers between these points.

The original application here under consideration requested permission to establish interdivision fares and rules and regulations between all points served by the Joseph Miller lines and all points served by the consolidated lines of the applicant, and to consolidate these rights and eliminate the restriction on the Joseph Miller lines against the transportation of passengers between Fresno and Fowler. At the time this petition was filed, March 22, 1926, applicant had pending before the Commission Application No. 11005, in which authority was sought to merge certain of its lines, establish through services, extend operative rights, correct fares, and adopt a standard form of rules and regulations, including a zone basis of express rates. Following our Decision No. 18107, dated March 28, 1927, in the latter proceeding (affirmed on rehearing by Decision No. 19691, dated May 2, 1928), wherein we authorized the California Transit Company to consolidate certain of its operative rights and to establish uniform rules and regulations and the zone system of express rates, applicant filed April 13, 1927, a supplemental application in the instant proceeding seeking authority to establish on the Miller lines these same rules, regulations and basis for establishing express rates that were authorized to apply on other portions of its system by our decision just referred to.

The benefits of consolidation resulting in superior service to the public and economy of operation, as well as the advantages of uniform rates, rules and regulations, were discussed at length in Application No. 11005 and need not be further referred to in this proceeding.

Upon consideration of all the facts of record we are of the opinion that a public hearing is not necessary and that the application should be granted.

ORDER.

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the consolidation and unification of the operative rights acquired from Joseph Miller with the unified system of the California Transit Company and also the adoption of the uniform rules and regulations and the zone basis of express rates as authorized in Application No. 11005, Decision No. 18107.

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It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to applicant, California Transit Company, a corporation, for the operation of the service described in the preceding paragraph.

It is hereby further ordered, that the restriction in the operative rights acquired from Joseph Miller for the transportation of passengers between Fresno and Fowler be and the same is hereby canceled.

Dated at San Francisco, California, this ninth day of May, 1928.

DECISION No. 19741.

IN THE MATTER OF THE APPLICATION OF MONTICELLO STEAMSHIP COMPANY, A CORPORATION, FOR ORDER AUTHORIZING ISSUANCE OF RENEWAL NOTE.

Application No. 14622.

Decided May 9, 1928.

SECURITY ISSUES—NOTE.—Monticello Steamship Company authorized to issue its unsecured two-year promissory note for $390,000 to Golden Gate Ferries, Inc.

McCutchen, Olney, Mannon and Greene, by *H. D. Costigan*, for Applicant.

BY THE COMMISSION.

OPINION.

Monticello Steamship Company, a corporation engaged in operating vessels for the transportation of passengers, freight and vehicles between San Francisco and Vallejo, has applied to the Railroad Commission for authority to issue an unsecured promissory note in the principal amount of $390,000, dated April 29, 1928, payable to the order of Golden Gate Ferries, Incorporated, on or before two years after date, with interest at the rate of 7 per cent per annum, for the purpose of renewing a one-year note of like amount that matured on April 29, 1927.

The application shows that Monticello Steamship Company has outstanding, at present, $600,000 of stock, all of which is owned by Golden Gate Ferries, Incorporated. Its indebtedness as of February 29, 1928, consisted of the one note payable of $390,000 and other working liabilities of $26,080.97.

Its assets and liabilities, as of February 29, 1928, are reported as follows:

Assets.

Investment in property and equipment	$2,325,135 00	
Less reserve for depreciation	655,727 70	
		$1,669,407 30

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Working assets:		
Cash	$45,285 12	
Accounts receivable	24,226 39	
Materials and supplies	8,014 63	
Other working assets	1,687 76	
		$79,213 90
Deferred debits		16,833 24
Total assets		$1,765,454 44
Liabilities.		
Capital stock		$600,000 00
Working liabilities:		
Notes payable	$390,000 00	
Accounts payable	16,929 07	
Other working liabilities	9,151 90	
		416,080 97
Accruals		16,633 45
Corporate surplus		732,740 02
Total liabilities		$1,765,454 44

The financial statement attached to the petition shows that on the outstanding capital stock of $600,000, the company during the last five years has paid dividends as follows:

Year	Rate—per cent	Amount paid
1923	10	$60,000 00
1924	2	12,000 00
1925	10	60,000 00
1926	10	60,000 00
1927	12	72,000 00

The record shows that applicant is the owner of four vessels, namely, the *City of Sacramento*, *Napa Valley*, *Calistoga*, and *General Frisbie*. It appears that during 1926 and 1927 the company, as shown in Exhibit "B," expended $390,728.70 in making additions, betterments and improvements consisting of the double ending and widening of the first three named vessels and of increasing the carrying capacity, that of the *City of Sacramento* and the *Calistoga* being increased from about 80 to 115 vehicles and that of the *Napa Valley* from about 70 to 100 vehicles. The *General Frisbie*, it is reported, is not now in operation. In addition the Vallejo terminal was constructed to take care of the double ended vessels. The exhibit shows the expenditures for these purposes as follows:

Remodeling of *City of Sacramento*	$131,639 80
Remodeling of *Calistoga*	94,365 00
Remodeling of *Napa Valley*	106,600 00
Construction of new slip at Vallejo	58,123 90
Total	$390,728 70

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Of the total cost it is reported that $390,000 was obtained through the issue to Golden Gate Ferries, Incorporated, of a one-year 7 per cent note for $390,000, and the balance from current funds on hand. The note matured on April 29, 1928, and this petition is made to obtain permission to issue a two-year 7 per cent note for $390,000 to refund said note.

The Commission has given consideration to applicant's request, and its financial condition, and is of the opinion that applicant should be permitted to issue a $390,000 two-year 6 per cent note.

ORDER.

Monticello Steamship Company having applied to the Railroad Commission for permission to issue a note for $390,000, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the application should be granted only as herein provided, and that the money, property or labor to be procured or paid for through the issue of the note is reasonably required for the purpose specified herein, and that the expenditures are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Monticello Steamship Company be and it hereby is authorized to issue its unsecured promissory note for $390,000 payable on or before two years after date of issue, with interest at not exceeding 6 per cent per annum for the purpose of paying or refunding the $390,000 note referred to in the foregoing opinion.

The authority herein granted is subject to the following conditions:

1. Applicant shall keep such record of the issue and delivery of the note herein authorized as will enable it to file, within thirty days after such issue, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

2. The authority herein granted shall become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $390.

Dated at San Francisco, California, this ninth day of May, 1928.

DECISION No. 19748.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE AND SALE OF CAPITAL STOCK OF THE PAR VALUE OF THREE HUNDRED TWENTY-FIVE THOUSAND DOLLARS.

Application No. 14121.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER PERMITTING IT TO ISSUE THREE HUNDRED THOUSAND DOLLARS OF EQUIPMENT TRUST CERTIFICATES.

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Application No. 14122.
Decided May 11, 1928.

SECURITY ISSUES—USE OF PROCEEDS—ACQUISITION OF EQUIPMENT.—Pickwick Stages System authorized to use not exceeding $59,000 of proceeds obtained through the issue and sale of securities to acquire equipment.

EVIDENCE—BURDEN OF PROOF—AS TO PROPOSED SECURITIES.—If the showing made is not of a nature to warrant the Commission to make the finding that, in its opinion, the money, property or labor to be procured or paid for by an issue of securities is reasonably required, and the purposes for which the proceeds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income, which finding is required under section 52 of the Public Utilities Act, authorization can not be granted.

VALUATION—ASCERTAINMENT—MEASURES OF VALUE—VALUE OF SECURITIES.—It is not the practice to use as a rate base the amount of securities outstanding, nor the figures carried in the fixed capital accounts in a utility's books unless, in the Commission's opinion, such figures, at the time of rate fixing, represent reasonable value.

SECURITY ISSUES—IN GENERAL.—Authorization to issue securities is permissive only, and not in any way compulsory upon applicant or an assumption of the duties of directors and officers.

SECURITY ISSUES—CONDITIONS UPON WHICH AUTHORIZED.—The Commission may attach to the exercise of authorization to issue securities such conditions as it may deem reasonable and necessary.

SECURITY ISSUES—CONDITIONS UPON WHICH AUTHORIZED.—Securities have often been authorized on condition that applicant should charge a portion of the purchase price of equipment to surplus. (12 C. R. C. 485; 16 C. R. C. 799; 21 C. R. C. 858; 28 C. R. C. 585; 28 C. R. C. 625 and 28 C. R. C. 361.)

SECURITY ISSUES—AMOUNT—IN GENERAL.—In the event that utilities construct their own properties, it is not the practice to allow the addition to actual construction costs of a contractor's or manufacturer's profit, and in authorizing the issue of securities to purchase equipment built by a holding company, no additional allowance was made for a return on any investment of the holding company or manufacturer's profit over and above a reasonable cost for such equipment.

Warren E. Libby, for Applicant.

SEAVEY, *Commissioner*.

SECOND SUPPLEMENTAL OPINION.

The Railroad Commission in Decision No. 19518, dated March 23, 1928, made its order setting aside the submission theretofore made in the above entitled matters and reopening them for further hearing. Such hearing was held on April 19th and April 20th.

These two proceedings were brought before the Commission on October 4, 1927, by Pickwick Stages System for the purpose of obtaining the approval of the Commission of its proposed financing, through the sale of stock and equipment trust certificates, of certain auto stage equipment. In the original decision herein, No. 19105, dated December 6, 1927, the Commission authorized the corporation to issue and sell, at not less than par, $325,000 of common stock, to execute and enter into an equipment trust agreement and a lease agreement, and to assume or guarantee the payment of not exceeding $300,000 of 6½ per cent serial equipment trust certificates, the issue and sale of which at

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not less than 95 per cent of face value was authorized. The order of the Commission provided, however, that the proceeds from the sale of the stock and certificates be deposited in a special bank account to be used by the company for the purpose of financing the construction cost of equipment, but only upon being authorized in supplemental orders to do so. In this connection Condition "1" of the order reads as follows:

> 1. To obtain supplemental orders authorizing the use of proceeds, from the sale of the stock and certificates, applicant shall first file with the Commission supplemental petitions containing certified statements showing in detail the actual cost of constructing the equipment to be financed through the use of said proceeds, and justify said costs.

Thereafter, applicant on December 14, 1927, filed a supplemental petition reporting that pursuant to said Decision No. 19105 it had issued and sold $34,900 of stock and $33,000 of certificates and had placed the proceeds in a special fund, as required by the decision. it asked for a supplemental order releasing the $34,900 of proceeds obtained from the sale, at par, of the stock and the $31,350 from the sale, at 95, of the certificates; a total of $66,250, to finance the purchase price of five auto stages, and for such other and further relief as might be proper in the premises.

It appeared that the equipment had been manufactured by The Pickwick Corporation, and applicant in making its request to use the $66,250 of proceeds, submitted as Exhibit "A" a certified statement in which it reported what purported to be the actual cost to that corporation of such equipment. The cost of the equipment, as shown on Exhibit "A," as compared with the proposed purchase price to be paid by Pickwick Stages System, is set forth in the Commission's decision on the supplemental petition as follows:

Equipment	*Reported cost to Pickwick Corporation*	*Proposed purchase price by applicant*	*Difference*
27-passenger stages:			
Carat	$11,732 19	$13,500 00	$1,767 81
Scarab	11,898 93	13,500 00	1,601 07
Tiger Eye	11,694 92	13,500 00	1,805 08
Louisiana	11,755 83	13,500 00	1,744 17
Subtotal	$47,081 87	$54,000 00	$6,918 13
26-passenger stage:			
Wisconsin	10,507 82	12,500 00	1,992 18
Total	$57,589 69	$66,500 00	$8,910 31

Exhibit "A" contained no showing of costs in addition to the $57,589.69 and in our opinion the company did not in its supplemental petition justify the proposed cost, as required by the original decision. of $66,500. Accordingly, the Commission's decision on the supplemental petition, No. 19232, dated January 10, 1928, authorized the use of

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only $57,589.69 of proceeds, the reported cost shown on Exhibit "A." The decision provided that in the event applicant paid more than $57,589.69 for the stages, it should charge any excess over $57,589.69 to its corporate surplus account, and not to its plant and equipment or operating expense accounts.

Following the issuance of said supplemental order, the company on January 28, 1928, filed a petition for rehearing. A rehearing was held on March 9, 1928, after which, Decision No. 19518, referred to above, was entered.

The petition for rehearing contained certain allegations that findings and portions of the supplemental decision were not supported by the evidence introduced at the hearing of said proceedings, were contrary to the evidence introduced therein and were contrary to and/or not supported by any evidence or showing introduced or submitted in said proceedings.

However, it will be recalled that in the original decision herein the Commission provided that whenever the company desired to use stock and certificate proceeds to pay for equipment, it should file statements showing in detail the actual cost of construction and justify such cost. If reference be made to the supplemental petition it will be noted that Exhibit "A," which was the only exhibit or cost statement filed with the supplemental petition, shows construction expenditures of only $57,589.69, so that the Commission necessarily, in making its supplemental order, was limited in authorizing the withdrawal of proceeds to the only evidence submited, that is, to the amount of $57,589.69. In this connection it should be borne in mind that under section 52 (*b*) of the Public Utilities Act the Commission is required to make a finding that in its opinion the money, property or labor to be procured or paid for by the issue of securities authorized is reasonably required, and the purposes for which the proceeds are to be used are not in whole or in part reasonably chargeable to operating expense or to income. If, in the Commission's opinion, the showing made is not of a nature to warrant it to make this finding it can not, it seems to me, grant the authority requested.

Allegations were made, also, that the order of the Commission operates to deprive it of its property without due process of the law and to deny it the equal protection of the law; that it is repugnant to the constitution, and that it is in excess of and beyond the jurisdiction of the Commission, and that in making it the Commission did not regularly pursue its authority. In respect to these allegations the company claims that by prohibiting it from charging to its plant and equipment or operating expense accounts any excess over the $57,589.69 the Commission has denied it the right to earn a reasonable return on the fair value of the equipment, and to

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that extent its order is confiscatory, has denied it the right to include in its capital investment the reasonable and fair value of the equipment, has ignored the evidence showing that the proposed purchase price was a reasonable and fair price, and has arbitrarily assumed the functions and duties of directors and officers of the corporation in regard to the determination of its business policies and its corporate management.

The authority granted can not deprive applicant of the right to earn a reasonable return on its investment and, in our opinion, is not confiscatory. The question of rates and return is not involved in these proceedings. In fixing rates it is not the practice of the Commission to use as a rate base the amount of securities outstanding, nor does it use as a rate base the figures carried in the fixed capital accounts on the utilities' books, unless such figures at the time the rates are fixed represent, in the opinion of the Commission, the reasonable value of a utility's property. The authority granted by the Commission to issue securities is permissive only and not in any way compulsory upon applicant or an assumption of the duties of directors and officers. The Commission, however, is authorized by the terms of the Public Utilities Act, to attach to the exercise of any authority granted such condition or conditions as it may deem reasonable and necessary. Here, having found that the use of only $57,589.69 of stock and certificate proceeds was reasonably required on the showing made, and was not in whole or in part reasonably chargeable to operating expense or to income, it seems also reasonable to provide that only such an amount should be charged to fixed capital. It should be noted that the Commission did not attempt to prohibit the company from paying more for the stages; it merely limited, in the exercise of the powers conferred and the duties imposed by the Public Utilities Act, the amount of securities that the company might use in acquiring such equipment. In making a condition that the company should charge a portion of the purchase price of equipment to surplus, the Commission merely was following a policy long since adopted by it. (See 12 C. R. C. 485; 16 C. R. C. 799; 21 C. R. C. 858; 28 C. R. C. 585; 28 C. R. C. 625; 28 C. R. C. 361; etc.) It has on at least two occasions when authorizing this very applicant to execute lease and option agreements for the purchase of operative rights, directed that no payments thereunder be charged to any asset or operating expense account. Reference is here made to Decision No. 17585, dated November 9, 1926 (28 C. R. C. 785), and Decision No. 17078, dated July 3, 1926 (28 C. R. C. 361).

The company further alleges that the order of the Commission does not permit it to operate under its equipment trust and lease agreements. The order herein is designed to take care of this objection.

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I do not believe it necessary in this opinion to comment further on the allegations contained in the petition for rehearing.

During the further hearing, Mr. Theodore Stein, one of the Commission's accountants, introduced as the Commission's Exhibit No. 1 a report based on an examination of the records of The Pickwick Corporation, setting forth the cost of different units of equipment, as shown on such records, and as adjusted by him following his examination. These costs are reported in the exhibit as follows:

Unit	*Cost to Pickwick Corporation*	*Adjusted cost*	*Purchase price by Pickwick Stages System*
Scarab, 33-passenger sedan	$11,746 58	$11,235 52	$13,500 00
Tiger Eye, 33-passenger sedan	11,446 42	10,919 00	13,500 00
Wisconsin, 27-passenger sedan	9,631 05	9,515 05	12,500 00
Columbia, 25-passenger aisle sedan	11,465 99	11,220 21	15,000 00
Niagara, 25-passenger aisle sedan	11,841 74	11,771 72	15,000 00
Cherokee, 28-passenger parlor observation car	17,163 09	17,314 17	17,500 00
Osage, same as Cherokee	15,189 32	14,806 41	17,500 00
Totals	$88,484 19	$86,782 08	$104,500 00

While some of the above units are not the subject of the supplemental petition herein, their costs were analyzed in an endeavor to ascertain the corporation's methods of recording such costs.

The $88,484.19 includes as overhead costs an amount equal to 50 per cent of the labor costs and 75 per cent of the material costs. These percentages are estimates. Mr. Stein in his adjusted cost of $86,782.08 distributed the overhead by using a productive hourly rate developed by him, of sixty-four cents, based on the actual expenditures for overhead items, as shown on the corporation's books.

In determining the sixty-four cent overhead Mr. Stein made an allowance for garage expense; maintenance of machinery and tools; depreciation on machinery, equipment and small tools; administrative and general officers' salaries; rent; postage; insurance; stationery; light; gas; power; water; telephone; interest on material purchases; obsolescence account stock material and traveling expenses. Equipment which, according to applicant, cost The Pickwick Corporation $88,484.19 would be sold to applicant at $104,500, or at 18.1 per cent more than the cost to the corporation. If the adjusted cost of $86,782.08 were accepted it would be sold to applicant 20.4 per cent more than it cost the corporation.

Objection was made by applicant that the cost figures, as shown in said Exhibit No. 1, were incomplete in that no allowance was made for taxes, experimental and research work, losses and obsolescence in materials and equipment and return to The Pickwick Corporation on

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its investment. Mr. Stein testified, however, that in ascertaining the construction costs and in determining his overhead allowances he had taken all the expenditures he had found reported on the corporation's books, and in this connection Mr. C. F. Wren, applicant's president, alleged that the records were incomplete. If there were such costs in addition to those shown in Exhibit No. 1, they do not seem to be carried on the books of account of The Pickwick Corporation, and the Commission has not been advised of their size or extent, except in the case of the item "Taxes," it appearing that during 1927 city and county taxes of between six and seven thousand dollars were paid, and that in addition a federal excise tax is payable, based on the selling prices of the stages. Mr. Wren, however, was unable to state definitely how the city and county taxes were paid and whether they were paid by Pickwick Stages System or The Pickwick Corporation. The record indicates that such payments do not appear on the books of The Pickwick Corporation and it occurs to me that if they were made by Pickwick Stages System, some duplication in the costs of that company would result if they were allowed here in connection with the cost of the stages. The federal excise tax, amounting to 3 per cent of the selling price, was not paid in the past, Mr. Wren stated, due to a belief that it was not required, but that payments on such account now must be made.

It has also been urged that the difference between the cost of building the respective stages, as shown by the records of The Pickwick Corporation and the price at which it is proposed to sell the same to the Pickwick Stages System represents only a reasonable manufacturer's profit. In this connection attention might be called to the fact that The Pickwick Corporation owns substantially all of the outstanding stock of Pickwick Stages System. It can scarcely be said that the stages in question are either constructed or purchased under competitive conditions. It has not been the practice of this Commission in the event that utilities construct their own properties, to allow the addition to the actual construction costs of what might be termed a contractor's or manufacturer's profit. The Commission has recognized, as it does in this proceeding, overhead costs and depreciation on equipment used in the construction of the properties. We feel that the record in these proceedings does not permit us to recognize more than $12,000 as a reasonable cost for the cars named "Carat," "Scarab," "Tiger Eye" and "Louisiana" and $11,000 for the "Wisconsin." If the Pickwick Stages System pays more for the equipment, the excess cost should be charged to surplus. The $12,000 and $11,000, we believe, includes all adequate allowances for the usual overhead expenses. No additional allowance should be made for a return on any investment of Pickwick Corporation or manufacturer's profit.

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The original applications herein contemplated the financing of some stages of types different from those referred to in the supplemental petition. When, and if, these stages are the subjects of future supplemental petitions, I believe that the Commission should then follow the same policy expressed in this decision in authorizing the use of securities or security proceeds to provide their costs. The evidence now before the Commission would indicate that for the 27-passenger aisle parlor sedan intercity type stages, equipped with lavatories and toilets, about $12,250 should be allowed, and for the 28-passenger observation parlor buffet semi-double deck stages, an allowance of about $16,000. These figures, of course, are subject to adjustment, depending on additional evidence that might hereafter be presented to the Commission.

I herewith submit the following form of order:

THIRD SUPPLEMENTAL ORDER.

A further hearing having been held in the above entitled matters, and the Railroad Commission being of the opinion that the order in Decision No. 19232, dated January 10, 1928, should be amended, as indicated herein, and that the money, property or labor to be procured or paid for by Pickwick Stages System, through the use of not exceeding $59,000 of the proceeds obtained from the issue and sale of the stock and equipment trust certificates authorized by Decision No. 19105, dated December 6, 1927, is reasonably required for the purpose specified herein, and that the expenditure of not exceeding $59,000 is not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that the order in Decision No. 19232, dated January 10, 1928, reading as follows:

> *It is hereby ordered,* that Pickwick Stages System be and it hereby is authorized to use not exceeding $57,589.69 of the proceeds obtained through the issue and sale of the stock and certificates authorized by Decision No. 19105, dated December 6, 1927, for the purpose of financing the cost of acquiring the five automobile stages referred to in the foregoing opinion, namely: the "Carat," "Scarab," "Tiger Eye," "Louisiana" and "Wisconsin," provided that in the event applicant pays more than $57,589.69 for said stages it shall charge any excess over $57,589.69 to its corporate surplus account.

be and it hereby is amended so as to read:

It is hereby ordered, that Pickwick Stages System be and it hereby is authorized to use not exceeding $59,000 of the proceeds obtained through the issue and sale of the stock and certificates authorized by Decision No. 19105, dated December 6, 1927, for the purpose of financing the cost of acquiring the five automobile stages referred to in the foregoing opinion, namely the "Carat," "Scarab," "Tiger Eye," "Louisiana" and "Wisconsin," or to deliver at 95 not exceeding $29,000 of the equipment trust certificates, and at par, $31,450 of the

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stock authorized by said Decision No. 19105, for the purpose of financing the cost of said stages; provided that in the event applicant pays more than $59,000 for said stages it shall charge any excess over $59,000 to its corporate surplus account.

It is hereby further ordered, that the order in Decision No. 19105, dated December 6, 1927, and the order in Decision No. 19232, dated January 10, 1928, shall remain in full force and effect, except as amended by this supplemental order.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eleventh day of May, 1928.

DECISION No. 19759.

IN THE MATTER OF THE APPLICATION OF H. O. VARRIER FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AN AUTO TRUCK LINE FOR THE TRANSPORTATION OF PROPERTY, FOR COMPENSATION, BETWEEN SACRAMENTO AND MARYSVILLE, AND INTERMEDIATE POINTS, VIA GARDEN CITY HIGHWAY.

Application No. 10624.

IN THE MATTER OF THE APPLICATION OF H. O. VARRIER TO SELL AND H. E. HOLMES AND P. W. HOLMES TO PURCHASE AN AUTOMOBILE FREIGHT LINE OPERATED BETWEEN SACRAMENTO AND YUBA CITY AND BETWEEN MARYSVILLE AND SACRAMENTO AS SPECIFIED IN DECISION OF RAILROAD COMMISSION No. 15015.

Application No. 12412.

Decided May 11, 1928.

CERTIFICATE—AUTOMOTIVE TRANSPORTATION—TRANSFER.—Decision No. 15013 granting an operative right to serve points intermediate between Sacramento and Marysville-Yuba City, modified and defined, and transfer to H. E. and P. W. Holmes affirmed.

AUTOMOTIVE TRANSFER—CERTIFICATES—SERVING INTERMEDIATE POINTS.—An automotive carrier authorized to operate between two cities, provided that no through service be rendered, may not, by moving a station to a point just outside the city limits of one city, and there accepting shipments destined to the other city, enlarge his operative rights without authorization.

Thelen and Marrin, by *Paul S. Marrin*, and *Ray Manwell*, and *Lemon and Johnston*, for Applicant.
C. R. Detrick, for Sacramento Northern Railway and Western Pacific Railroad Company and Southern Pacific Company, Protestants.
Edward Stern, for American Railway Express Company, Protestant.
C. A. Teutschel, for Sacramento Chamber of Commerce.
H. P. Norton, for Schaw-Batcher Company.

SEAVEY, *Commissioner*.

OPINION.

On June 10, 1927, these two matters were reopened for further hearing and determination, for such further investigation as might be meet

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and proper, and for the taking of evidence upon the question of the revocation, rescission, alteration or amendment of our prior decisions.

Hearings were held at Marysville on December 15, and at Sacramento on December 16, 1927, on which latter date the matters were submitted.

In Application No. 10624, Decision No. 15013, H. O. Varrier was granted a certificate to operate "an auto truck line as a common carrier of freight over and along the Garden highway via Elkhorn, Verona, Nicolaus, Tudor, Oswald and Bogue between Sacramento and all intermediate points between Sacramento and Yuba City and between Marysville and all intermediate points between Marysvlle and Sacramento, provided that no local service shall be rendered between Marysville and Yuba City, and provided, further that no through service shall be rendered between Sacramento and Yuba City or between Sacramento and Marysville * * *."

In Application No. 12412, Decision No. 15862, authority was given H. O. Varrier to sell his rights, and H. E. Holmes and P. W. Holmes to purchase them.

It was stipulated that the records in Application No. 12938 be considered in evidence on the reopened proceedings. In said Application No. 12938, Decision No. 18443, H. E. and P. W. Holmes, copartners doing business under the name of Garden Highway Truck Line were refused a certificate to operate a through freight truck service between Sacramento and Yuba City and Sacramento and Marysville. In Decision No. 18559 applicant's petition for rehearing was denied.

Practically all the testimony in the reopened proceedings was that of the applicant carrier, introduced to further strengthen the application for through service. The protestants offered no further direct testimony.

After a careful consideration of this testimony in connection with that already of record in the former proceedings, I am of the opinion that had it been before the Commission in the previous records the decisions in Applications Nos. 10624 and 12938 would not have extended the rights of applicant beyond what they now are.

During the hearing in Application No. 12938 protestants raised the issue that applicants were then, and had been, operating in violation of the certificate granted under Application No. 10624, in that they were receiving and transporting through freight from Sacramento to Marysville and Yuba City. It was primarily for the purpose of investigating this question and taking such action as might be necessary that the instant proceedings were initiated. As to this matter the record discloses the following facts:

1. Shortly after receiving his certificate, H. O. Varrier established a station about a half mile outside of the city limits of Sacramento on the Auburn road near Sixteenth street.

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2. A month and a half after taking over this line, H. E. and P. W. Holmes moved the station a quarter of a mile nearer the city of Sacramento on the Auburn road.

3. After the decision on Application No. 12938, denying a through certificate, Holmes again moved this station still closer to the city limits of Sacramento.

4. The testimony shows the delivery of all freight to the station in question has been from within the city of Sacramento, or from points immediately adjacent to the city limits.

5. P. W. Holmes testified that a large percentage of his business was freight delivered to him at this station from Sacramento and hauled through to Marysville and Yuba City.

6. Business firms in Sacramento and in Marysville and Yuba City testified as to the shipment and receipt of such through freight.

7. The record also discloses that the intermediate business in this territory which was entirely without or lacked reasonable common carrier service, and to serve which this certificate was granted, lies wholly between points several miles north of the city of Sacramento within and adjacent to what is known as Reclamation District 1000, situated about three miles north of the northern limits of the city of Sacramento, and Bogue situated south of Yuba City.

From the record before me I can come to no other conclusion than this—that the station on Auburn road outside the city of Sacramento is not an intermediate point as defined and specified in the certificate of public convenience and necessity granted H. O. Varrier and purchased and now owned by H. E. and P. W. Holmes, but rather it is a means instituted by H. O. Varrier and continued by H. E. and P. W. Holmes to annul the restrictions placed by this Commission on the rights granted by Decision No. 15013 and thereby to enlarge said rights without lawful authority.

To prevent such unlawful enlargement of said operations and to more clearly define the certificated rights so that the wording of our order will follow more closely the proof of public convenience and necessity as shown in this record, I recommend an amendment to Decision No. 15013.

ORDER.

The above proceedings having been reopened, public hearings having been held, briefs having been filed, the proceedings having been submitted and the Commission being advised as to the facts;

It is hereby ordered, that paragraph three in Decision No. 15013 of this Commission, decided June 6, 1925, be and it is hereby amended to read as follows:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by H. O. Varrier of an auto truck line, as a common carrier of freight as follows:

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Said H. O. Varrier may transport freight originating in Sacramento and destined to points intermediate between the southwest corner of Reclamation District No. 1000 (about three (3) miles north of the northerly boundary line of the city of Sacramento), and Bogue, including Bogue, or vice versa; and freight originating in Marysville or Yuba City and destined to points intermediate between and including Bogue and said southwest corner of Reclamation District No. 1000, or vice versa; such operations to be over and along the Garden highway via Elkhorn, Verona, Nicolaus, Tudor, Oswald and Bogue; provided, that no local service shall be rendered between Marysville and Yuba City, and provided, further, that no through service shall be rendered between Sacramento and Yuba City or between Sacramento and Marysville, and the foregoing certificate is hereby granted with the understanding that the ownership of 17 miles of the foregoing route by the said Natomas Company of California is hereby recognized, which privately owned portion of said route is hereinabove particularly described, and the authority herein granted to operate an auto truck line as a common carrier of freight is made subject to all the rights of said Natomas Company, a corporation, as the owner of the private road hereinabove particularly described.

It is hereby further ordered, that applicants, H. E. and P. W. Holmes, shall file within twenty days from the date hereof tariffs and time schedules which shall be identical with those now on file in their names with the Railroad Commission, save and except that they shall show service to no points other than those named herein and points located within the territory in which service may be given.

It is hereby further ordered, that the order of the Commission transferring the so-called Varrier right to H. E. and P. W. Holmes be and the same is hereby affirmed, with the distinct understanding, however, that the right transferred shall be the right as defined by the order herein.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eleventh day of May, 1928.

DECISION No. 19762.

IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE AND SALE OF CAPITAL STOCK OF THE PAR VALUE OF THREE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS.

Application No. 14121.

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IN THE MATTER OF THE APPLICATION OF PICKWICK STAGES SYSTEM, A CORPORATION, FOR AN ORDER PERMITTING IT TO ISSUE THREE HUNDRED THOUSAND DOLLARS OF EQUIPMENT TRUST CERTIFICATES.

Application No. 14122.

Decided May 12, 1928.

SECURITY ISSUES—USE OF PROCEEDS.—Decision No. 19105 amended relative to the use of cash realized from the sale of $325,000 of common stock.

BY THE COMMISSION.

FOURTH SUPPLEMENTAL ORDER.

The Commission having given further consideration to the issue and sale by Pickwick Stages System of $325,000 of common stock and $300,000 of equipment trust certificates, and the assumption of the payment of said certificates by said Pickwick Stages System, and it being of the opinion that the money, property or labor to be procured and paid for through the issue of said stock and certificates is reasonably required by applicant, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income; and good cause appearing; therefore,

It is hereby ordered, that the order in Decision No. 19105, dated December 6, 1927, as amended from time to time, be and the same is hereby further amended, so as to permit the sale and delivery of the $300,000 equipment trust certificates, the issue of which is authorized by said Decision No. 19105, at not less than 95 per cent of their face value plus accrued interest, for the purpose of paying 50 per cent of the cost of any number of the following types of stage equipment:

a. Parlor sedan, twenty-six-passenger, intercity type stages at ---- $11,000 00 each
b. Aisle parlor sedan, twenty-seven-passenger, intercity type stages at 12,000 00 each
c. Aisle parlor sedan, twenty-seven-passenger, intercity type stages, equipped with lavatories and toilets at ---------- 12,250 00 each
d. Observation parlor buffet, twenty-eight-passenger semidouble-deck stages at ---------- 16,000 00 each

Said Decision No. 19105, as amended, is hereby further amended so as to permit the Pickwick Stages System to use the cash realized from the sale of the $325,000 of common stock, the issue and sale of which is authorized by said Decision No. 19105, or deliver said stock at par, or such part of said cash or stock as may be necessary to pay the difference between said cost of said stages and the amount of said cost paid through the sale and delivery of the aforesaid equipment trust certificates.

It is hereby further ordered, that if the Pickwick Stages System pays more for the several types of stages herein mentioned than the prices stated herein, the difference between the amounts paid and the prices herein stated shall be charged to its corporate surplus account.

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It is hereby further ordered, that the provision of the order in said Decision No. 19105 reading:

"Under the authority herein granted no stock or certificates may be issued after June 30, 1928,"

be and the same is hereby amended so as to read:

"Under the authority herein granted no stock or certificates may be issued or delivered after November 30, 1928."

Dated at San Francisco, California, this twelfth day of May, 1928.

DECISION NO. 19763.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY, A CORPORATION, FOR AN ORDER GRANTING PERMISSION TO INCREASE PASSENGER RATES AND FARES BETWEEN POINTS IN THE STATE OF CALIFORNIA.

Application No. 13460.

Decided May 15, 1928.

RATES—STREET RAILROAD—EXPERIMENTAL FARES.—Trial fares of Pacific Electric Railway Company in Los Angeles reduced.

BY THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

On April 7, 1928, this Commission handed down an order establishing a series of experimental or trial fares for the Pacific Electric Railway System with the idea of ascertaining by actual tryout the kind of fare structure which would maintain the system with the least charge or burden on its patrons. In that order the Commission retained jurisdiction to make further orders from time to time as occasion demanded. The effect of the various fares has been carefully checked day by day.

As to the local fares in Los Angeles, it has been from time to time represented to the Commission that the fares between the first and second zones and between portions of the third and fourth zones were such that in view of competitive and other conditions they would decrease rather than increase patronage and revenue to the company. Checks of actual operation have confirmed these representations and on May 14th, at the office of the Commission, representatives of the city of Los Angeles and of the Pacific Electric Railway Company appeared informally and further confirmed the results indicated above, the company indicating that in view of the experience already had under these rates it was acquiescent to there being superimposed on the local rates certain reductions in favor of regular riders between the zones

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referred to, the effect of which would be to remove the sharp change in charges at the zone point.

As these additional trial fares represent substantial decreases, the company will be authorized to establish them at once and without delay.

These additional trial fares, in common with those heretofore established, will be the basis of further investigation and such modifications as additional information may justify. Therefore,

It is hereby ordered, that applicant, Pacific Electric Railway Company, be and it is hereby authorized to establish within twenty days from the date of this order, but on not less than one day's notice to the Commission and the public, tariffs containing the following fares in addition to the fares authorized by Decision No. 19566:

Los Angeles Local Fares.

(1) Establish book of 20 tickets for $1 good between first and second zones, this ticket to be limited for use within sixty days and to be good for bearer. To be sold by agents and local conductors, good for full transfer privilege within zones for which issued.

(2) Establish book of 20 tickets for $2 good between zone one and Crescent Junction; also between zone one and Mission street and Fair Oaks avenue on South Pasadena line. This ticket to be limited for use within sixty days and to be good for bearer. To be sold by agents and local conductors, good for full transfer privilege within zones for which issued.

(3) Establish one-way fare of five cents between Crescent Junction and Vermont avenue on Hollywood boulevard and Santa Monica boulevard lines, including same transfer privileges now in effect to or from all intersecting lines in zone three.

The Commission reserves the right to make such further order or orders in this proceeding as may appear just and reasonable.

For all other purposes, the effective date of this order shall be the date hereof.

Dated at San Francisco, California, this fifteenth day of May, 1928.

DECISION NO. 19764.

IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY, A CORPORATION, FOR AN ORDER FIXING REASONABLE RATES FOR THE TRANSMISSION OF INTRASTATE PRESS DISPATCHES.

Application No. 13372.

Decided May 15, 1928.

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RATES—TELEGRAPH—PRESS DISPATCHES—INVESTIGATION.—Western Union Telegraph Company authorized to increase rates for its intrastate press dispatches, and attorney for Commission directed to institute proceedings before the Interstate Commerce Commission seeking an investigation and revision of interstate rates as they affect California.

RATES—REASONABLENESS—COST OF SERVICE.—When a telegraph utility has established that intrastate press rates result in an out-of-pocket loss and the increase requested will still leave the business a profitless one, applicant is entitled to the specific relief sought. (*Northern Pacific R. R. Co.* vs. *North Dakota*, 236 U. S. 585.)

INTERSTATE COMMERCE COMMISSION—RATE INVESTIGATION.—When an inter and intra state telegraph utility earns an excessive return upon its entire California business, while purely intrastate business is unprofitable, the Commission will direct an appropriate proceeding before the Interstate Commerce Commission for relief from such excessive costs.

Beverly L. Hodghead and *Derlin and Brookman*, by *Douglas Brookman*, for Applicant.

H. W. Norton and *G. J. Fink*, for San Francisco Newspaper Association, California Newspaper Publishers' Association, Los Angeles Express, Los Angeles Herald, Los Angeles Examiner and Stockton Independent, Protestants.

W. Rupp, for the Department of Public Works of the State of Washington, Interested Party.

WHITSELL, *Commissioner*.

OPINION.

Western Union Telegraph Company, applicant in this proceeding, requests the Commission for an order authorizing an increase in the rates and tolls on intrastate press dispatches. The specific request made is for the establishment of rates for such intrastate press dispatches that day press messages will be assessed at one-third and night press messages one-sixth of the present intrastate full commercial day rates at commercial count. Public hearings have been had in this proceeding and the matter has been submitted.

On August 1, 1918, the federal government assumed control of telephone and telegraph utilities in the United States. Rates for all commercial messages transmitted by telegraph companies were increased twenty per cent over the rates for similar service effective prior to that time. No increase in press dispatch rates was made. Subsequent to the release of telephone and telegraph companies from federal control, on July 31, 1919, this Commission, by its General Order No. 56, continued in effect those rates established for service in the State of California during the period of federal control. These rates were declared just and reasonable in this Commission's Decision No. 9180, dated June 29, 1921.

The applicant claimed and by a fair preponderance of the evidence established that its intrastate press rates were such as to result in an out-of-pocket loss on this category of business. The proposed rates, according to the showing made, will reduce this loss by about $7,700 a year but will still leave the business a profitless one. Under the rule laid down in *Northern Pacific Railroad Co.* vs. *North Dakota*, 236 U. S. 585, the applicant is entitled to the specific relief it seeks.

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But this by no means disposes of the situation here presented.

In making out its case for the specific relief sought and here granted, applicant, by its responsible officials, submitted (a) a valuation of its property in California, and (b) statements of operating results of its California business. It then segregated its California property into that used in intrastate business and that used in inter and trans state business, and did the same in respect to its operating revenue and expense. This indicated that its California business as a whole was exceedingly profitable, while its purely intrastate business, as to which this Commission has jurisdiction, was unprofitable.

The tables hereafter set forth exhibit the showing thus made:

TABLE I.

CALIFORNIA BUSINESS.

Undepreciated value of California property in 1925, as per valuation methods of Interstate Commerce Commission (adjusted from Applicant's Exhibits 2 and 3)	[1]$10,853,460 00
Total California operating receipts for 1925 (Applicant's Exhibit 3A)	7,891,554 00
Total California operating expenditures for 1925 (Applicant's Exhibit 3A)	5,016,342 00
California operating earnings for 1925 (Applicant's Exhibit 3A)	2,875,212 00
Rate of return in 1925 on California business	[2]26.4 per cent

TABLE II.

INTRASTATE BUSINESS.

Undepreciated value of California property used in intrastate business in 1925, as per valuation methods of Interstate Commerce Commission (adjusted from Applicant's Exhibits 2 and 3)	$2,748,670 00
Total California operating receipts for 1925 (Applicant's Exhibit 3A-1)	2,035,889 00
Total California operating expenditures for 1925 (Applicant's Exhibit 3A-1)	2,106,103 00
Net California operating earnings (Applicant's Exhibit 3A-1)	*70,214 00

* Loss.

TABLE III.

INTERSTATE BUSINESS (INCLUDING TRANS-STATE).

Undepreciated value of California property used in interstate business in 1925, as per valuation methods of Interstate Commerce Commission	$8,106,790 00
Total California operating receipts for 1925	5,855,665 00
Total California operating expenditures for 1925	2,910,239 00
Net California operating earnings	2,945,426 00
Rate of return in 1925 on California interstate business	[3]36 per cent

[1] Applicant in preparing its case had its Mr. Clunan, its chief division auditor, make up figures for the year 1925. Mr. Meigs, the applicant's valuation engineer, presented valuation figures, but these were for 1926. He had previously given Mr. Clunan approximately correct figures for 1925. The figure here used is believed to be an accurate adjustment of Mr. Meigs' 1926 figures to the 1925 basis, in view of the explanatory testimony of these two witnesses.

[2] If the valuation be reduced by, say 10 per cent because of depreciation, the rate of return would be 29 per cent. Mr. Meigs testified that the reproduction new cost would be about 40 per cent higher than the figure given by him, or, in round figures, $14,000,000. The net earnings for 1925 would yield a return of 20 per cent upon this valuation. Should this figure of $14,000,000 be reduced to allow for depreciation the resultant rate of earning would be substantially higher. It is apparent from these figures that the company in 1925 earned on its California business all the way from 20 per cent to 30 per cent, depending upon the basis of the valuation used—and this without taking into account the reasonableness of some of its operating expenses.

[3] If the value of property used in interstate business be depreciated by 10 per cent the rate of return would be approximately 40 per cent.

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While the figures given in the foregoing tables are for 1925, they were presented by the applicant as representative of its earning position. An examination of the annual reports of the company on file with this Commission indicates that these 1925 figures are fairly representative of 1927 conditions.

It thus appears from the applicant's own showing that upon its entire California business it is earning a return of from 20 per cent to 30 per cent, depending upon the basis of valuation upon which computed, while on its California interstate business its earning rate is substantially higher. On the basis of valuation followed by the Interstate Commerce Commssion its earnings for the latter class of business are approximately 40 per cent.

Fortunately congress has provided in the Interstate Commerce Commission a body vested with the authority and the jurisdiction to control and fix the interstate rates and charges of a utility such as the applicant. With the situation here presented, the Commission would be derelict in its duty if it failed to authorize and direct an appropriate proceeding before the Interstate Commerce Commission for relief from rates so excessive as here indicated.[4] The order will direct such a proceeding.

The following form of order is recommended:

ORDER.

Western Union Telegraph Company having made application to the Railroad Commission for an order authorizing it to increase its rates and charges for press dispatches within the State of California, as set forth in Exhibit "A" attached to its application, hearings having been held, the matter having been submitted, and the Commission being fully informed in the matter, it is hereby found as a fact that the increase in press rates herein requested is justified.

Basing its order on the foregoing finding of fact and other findings of fact contained in the opinion which precedes this order;

It is hereby ordered, that Western Union Telegraph Company

(1) Charge and collect for intrastate press dispatches in the State of California on and after June 1, 1928, the following rates:

For day press messages: One-third of what the tolls would be on the same message at full commercial day rates, at commercial count.

For night press messages: One-sixth of what the tolls would be on the same message at full commercial day rates, at commercial count.

(2) File with the Railroad Commission the rates set forth in (1) above, on or before May 25, 1928.

It is further ordered, that the attorney of this Commission, in the name of and for the Railroad Commission of California, file an appro-

[4] If applicant's rates should be reduced so that on its California business as a whole it would earn 7 per cent on the basis of valuation thus far generally employed by the Interstate Commerce Commission, this would involve a reduction in its gross California receipts of over $2,000,000 a year.

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priate petition or complaint before the Interstate Commerce Commission against the Western Union Telegraph Company asking for an investigation and revision of the company's interstate rates as they affect California.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this fifteenth day of May, 1928.

DECISION No. 19768.

PACIFIC COTTONSEED PRODUCTS CORPORATION, SAN DIEGO OIL PRODUCTS CORPORATION (PACIFIC COTTONSEED PRODUCTS CORPORATION, SUCCESSOR)

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN DIEGO AND ARIZONA RAILWAY COMPANY.

Case No. 2470.

Decided May 15, 1928.

REPARATION.—Defendant carriers directed to make reparation on shipments of fertilizer from Potash to Riverside and other points, and directed to establish reasonable rates.

RATES—RAILROAD—DISCRIMINATION—REMOVAL OF.—In finding railroad rates unreasonable and discriminatory, rates were not prescribed to all points covered by the complaint, carriers being expected to establish rates comparable with those prescribed, distance considered.

L. H. Stewart, for the Complainants.
E. W. Camp and *William E. Richards*, for the Defendants.
Edgar V. Byers, for the San Diego Chamber of Commerce, Intervener in behalf of the Complainants.

BY THE COMMISSION.

OPINION.

Complainants are corporations organized under the laws of the State of California with their principal place of business at Potash, California, and are engaged in the manufacture and distribution of cottonseed by-products, the feeding of live stock and the selling and shipping of animal manure fertilizer. By complaint filed December 29, 1927, and as amended January 21, 1928, it is alleged that the rates on animal manure fertilizer from Potash to Los Angeles, Prenda, Riverside, Highgrove and other points on the Santa Fe east and south of Los Angeles are unjust and unreasonable, in violation of section 13 of the Public Utilities Act; also that the rates from Los Angeles and other southern California shipping points to the same destination territory are unduly preferential to such shipping points and unduly

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discriminatory and prejudicial to Potash, in violation of section 19 of the Public Utilities Act.

We are asked to prescribe rates removing the alleged violations of the law and to award reparation.

Except as noted rates will be stated in cents per 100 pounds.

A public hearing was held at Los Angeles March 28, 1928, before Examiner Geary, and the case having been duly heard and submitted is now ready for our opinion and order.

Potash is an industrial suburb of San Diego, on the San Diego and Arizona Railway 1.1 miles from National City. Complainants operate yards at this point for the feeding and fattening of cattle, and ship animal manure fertilizer to various southern California destinations, representative of which are Prenda, Riverside and Highgrove. Complainants' principal competition is from shippers located at Los Angeles, Alhambra, Burbank, West Glendale, Forest Lawn and Industrial; these latter points being industrial suburbs of Los Angeles hereinafter will be so referred to. There is also competition to a less degree from other points, the foremost being in the Palo Verde and Imperial valleys. This fertilizer is of low value, is sold f.o.b. destination according to its chemical and organic content, and moves in open top cars. Switch engines perform the transportation service from Potash to National City, at which latter point the traffic is interchanged with The Atchison, Topeka and Santa Fe Railway, hereinafter referred to as the Santa Fe. The through rates from Potash are combinations based on National City, representative of which are 15½ cents to Prenda and Riverside for 134 and 139 miles, respectively, and 16 cents to Highgrove for 142 miles, made up of 2½ cents per 100 pounds or 50 cents a ton over the single line rates of the Santa Fe from National City to destination. The rates yield a per car mile revenue of 64.4 cents to 67.2 cents based on an average car loading of 58,173 pounds and 2.2 cents to 2.3 cents per ton per mile, and included in the revenue is a charge of approximately $14.54 per car for the switching service of 1.1 miles, Potash to National City.

Complainants compare the rates assailed with the single and joint line rates on animal manure from Los Angeles and its industrial suburbs and from San Pedro and other producing points, as well as the joint rates on fertilizer from exclusive Pacific Electric points. These rates yield 66.7 cents to 88.5 cents per car per mile and 2.2 cents to 3 cents per ton mile, but are for distances substantially less than those from Potash. The rates from the industrial suburbs beyond the Los Angeles switching limits are made by the use of a per car charge of $4.50 to $10, plus the local rates from Los Angeles to destinations. These proportional per car charges are for distances varying from 4 miles to 9 miles and apply only when incidental to a line haul of rail

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carriers beyond Los Angeles as compared with the charge of $14.54 per car Potash to National City, 1.1 miles. Complainants do not contend, however, that a per car switching charge should be established between Potash and National City, but they are contending for through joint rates from Potash.

Defendants compare the assailed rates with those on fertilizer prescribed by the Interstate Commerce Commission in Consolidated Southwest Cases, 123 I. C. C. 203, for application in the southwest territory. They also compare the present distance scale rates with 80 per cent of Class E, the applicable class rates on fertilizer, as well as with 2½ cents to 3 cents per 100 pounds differential observed by rail carriers in constructing joint rates on fertilizer from Imperial Valley points on the Southern Pacific Company to destinations on the Santa Fe. It is also of record that a differential of 1 cent per 100 pounds over the single line scale is observed in constructing joint rates on crushed rock in southern California, and the joint rates on cottonseed cake and meal from Potash to certain California points reflect 2 cents per 100 pounds over the single line scale.

After consideration of all the facts of record and the matters and things involved, we are of the opinion and so find that the rates assessed and collected by defendants were, are and will be for the future unjust, unreasonable and unduly prejudicial and discriminatory to Potash to the extent that such rates exceed or may exceed joint rates of 14 cents to Prenda and Riverside and 14½ cents to Highgrove, minimum carload weight 50,000 pounds. We have not prescribed rates to all points covered by complaint, and the defendants will be expected to establish rates comparable with those herein prescribed, distance considered. We further find that complainants made the shipments as described, paid and bore the charges thereon and have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable and are entitled to reparation, with interest at the rate of 6 per cent per annum. Complainants should submit statement of shipments to defendants for check. Should it not be possible to reach an agreement as to the amount of reparation, the matter may be referred to this Commission for further consideration and the entry of a supplemental order should the same be necessary. Shipments made subsequent to the hearing may be included in the reparation statement filed hereunder, if accompanied by appropriate proof in the form of an affidavit that the freight charges thereon were paid and borne by complainants.

ORDER.

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and

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basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and by reference made a part hereof;

It is hereby ordered, that the defendants, The Atchison, Topeka and Santa Fe Railway Company and San Diego and Arizona Railway Company, be and they are hereby notified and required to cease and desist on or before forty-five days from the date of this order and thereafter to abstain from publishing, demanding or collecting the present rates for the transportation of animal manure fertilizer from Potash to points involved in this proceeding.

It is hereby further ordered, that said defendants, The Atchison, Topeka and Santa Fe Railway Company and San Diego and Arizona Railway Company, be and they are hereby required to establish on or before forty-five days from the date of this order upon notice to this Commission and the general public by not less than five days' filing and posting in the manner prescribed by law and thereafter to maintain and apply, until otherwise ordered by the Commission, for the transportation of animal manure fertilizer from Potash, joint rates which will not exceed those set forth in the opinion immediately preceding this order, which is hereby made a part hereof.

It is hereby further ordered, that defendants, The Atchison, Topeka and Santa Fe Railway Company and San Diego and Arizona Railway Company according as they participated in the traffic, be and they are hereby authorized and directed to refund to complainants, Pacific Cottonseed Products Corporation and San Diego Oil Products Corporation (Pacific Cottonseed Products Corporation, successor), with interest at the rate of 6 per cent per annum, all charges they may have collected in excess of the rates herein found just and reasonable for the transportation of animal manure fertilizer from Potash to destinations involved in this proceeding.

Dated at San Francisco, California, this fifteenth day of May, 1928.

DECISION No. 19776.

IN THE MATTER OF THE APPLICATION OF THE LAKEPORT AND BLUE LAKES TELEPHONE ASSOCIATION FOR AUTHORITY TO ABANDON TELEPHONE SERVICE IN THE AREA IN AND AROUND THE TOWN OF LAKEPORT, LAKE COUNTY, CALIFORNIA.

Application No. 14447.
Decided May 18, 1928.

SERVICE—TELEPHONE—ABANDONMENT.—Lakeport and Blue Lakes Telephone Association authorized to abandon service in Lakeport and vicinity.

Law and Utilities Department of California Farm Bureau Federation, by *Edson Abel*, for Applicant,

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H. W. Bemis, Manager and Secretary and *Herbert Porter*, President, for Lake County Telephone Association.

BY THE COMMISSION.

OPINION.

Lakeport and Blue Lakes Telephone Association, unincorporated, applicant in this this proceeding, operates a small telephone exchange from which it renders service in Lakeport and vicinity, all in Lake County. The Association owns jointly with Upper Lake Farmers' Telephone Association a trunk line extending from Lakeport to Upper Lake.

Applicant claims that future operation of its system is impossible on account of expected loss in revenues.

A hearing in this proceeding was held April 26, 1928, at Lakeport before Examiner Gannon.

Testimony given at the hearing was to the effect that only seventeen subscribers were receiving service from applicant's system and that some of its former subscribers had become subscribers to the service of the Northern California Telephone Company which operates a telephone system in substantially the same territory as that served by the applicant. It was stated that the estimate of revenue for the year 1928 is $200 and that $1,800 would be needed to maintain service. Other testimony indicated that on account of the deteriorated condition of the plant, it would require an expenditure of at least $2,500 to make possible the continuance of the Association's service and that such a sum of money could not be secured by applicant.

John W. Morrison, president of the Association, stated that applicant proposes to transfer its interest in the trunk line to Upper Lake to the Upper Lake Telephone Association without charge. It is petitioner's desire to sell all of its facilities in Lakeport to the Northern California Telephone Company for the sum of $2,000 in the event authority to discontinue service is secured.

Applicant's system is one of a group of small utilities which render telephone service in the territory about Clear Lake. Of these, Upper Lake Telephone Association operates in and around Upper Lake, which is north of Lakeport; Lake County Telephone Association operates in and around Kelseyville to the south of Lakeport; and Lower Lake Farmers' Associated Telephone Lines renders telephone service in and around Lower Lake located southeast of Kelseyville. Each subscriber to the service of these associations is entitled to telephone connection to any other subscriber in the group without payment of any message charges. Nonsubscribers may receive such service at toll rates. It is evident that abandonment of telephone operations by applicant will curtail the service of all subscribers of all the before-named associations. The Commission, by its engineers, on several occasions

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has suggested to these associations plans for making permanent this extensive service and, in Decision No. 12631, attention was called to the inadequacy of applicant's service and a method for securing improvement was outlined (23 C. R. C. 903). Failure to cooperate in efforts to improve service has resulted in the situation incident to this abandonment proceeding.

No one at the hearing in this matter stated any objection to the granting of applicant's request.

We believe that the Association can not reasonably be expected to continue telephone service and that the request for authority to abandon telephone operations should be granted and the order following will so provide.

ORDER.

Lakeport and Blue Lakes Telephone Association, having made application to the Railroad Commission for authority to abandon all of its telephone service in Lakeport and vicinity, a public hearing having been held and the matter submitted for decision:

The Railroad Commission finds as a fact that applicant in this proceeding should be permitted to abandon telephone operations as requested.

Basing its order on the foregoing finding of fact and such other facts as are contained in the opinion which precedes this order;

It is hereby ordered, that Lakeport and Blue Lakes Telephone Association be and it is hereby authorized to abandon all telephone operations provided such abandonment shall be completed on or before June 1, 1928.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this eighteenth day of May, 1928.

DECISION No. 19777.

IN THE MATTER OF THE APPLICATION OF NORTH SACRAMENTO LIGHT AND WATER COMPANY, A CORPORATION, FOR AUTHORITY TO SELL THE WATER SYSTEM AND PROPERTIES OPERATED BY NORTH SACRAMENTO LIGHT AND WATER COMPANY TO PUBLIC UTILITIES CALIFORNIA CORPORATION, A CORPORATION, AND FOR AUTHORITY OF PUBLIC UTILITIES CALIFORNIA CORPORATION TO BUY SAID SYSTEM AND PROPERTIES AND TO ISSUE SHARES OF ITS CAPITAL STOCK OF THE PAR VALUE OF SIXTY THOUSAND DOLLARS AND ITS FIRST MORTGAGE GOLD BONDS OF THE FACE AMOUNT OF NINETY THOUSAND DOLLARS.

Application No. 14475.

Decided May 18, 1928.

49—56862

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TRANSFER—SECURITY ISSUES.—North Sacramento Light and Water Company authorized to transfer properties to Public Utilities California Corporation, and the latter authorized to issue $117,800 of its common capital stock.

SECURITY ISSUES—AMOUNT—ON CONSOLIDATION.—In authorizing an issue of securities upon transfer of properties an allowance for organization expenses, franchises, and street assessments should be added to original estimated cost.

Orrick, Palmer and Dahlquist, by *Hillyer Brown* for Public Utilities California Corporation.

J. M. Inman, for North Sacramento Light and Water Company.

BY THE COMMISSION.

OPINION.

In this application as amended on May 3, 1928, the Commission is asked to enter its order authorizing the North Sacramento Light and Water Company to transfer its business and properties to Public Utilities California Corporation, and authorizing the Public Utilities California Corporation to acquire said business and properties. The Commission is also asked to authorize the Public Utilities California Corporation to issue at par in payment for said properties $144,600 of its common capital stock.

The North Sacramento Light and Water Company is a corporation engaged in the business of supplying water for domestic and other uses in, and in the vicinity of the town of North Sacramento. The company has outstanding $44,550 of stock, $60,000 of bonds and on December 31, 1927, had current liabilities of $41,320.85. Of the latter sum $39,952.57 was due the North Sacramento Land Company which owns all of the outstanding stock, except directors' shares, of North Sacramento Light and Water Company. The company for the past two years has reported revenues and expenses as follows:

Item	1926	1927
Operating revenues	$17,313 11	$17,675 21
Operating expenses, exclusive of depreciation	7,787 65	8,972 30
Balance	$9,525 46	$8,703 01
Less depreciation	3,081 13	3,299 27
	$6,444 33	$5,403 74
Add nonoperating revenue	297 33	322 50
Amount available for interest, dividends or surplus	$6,741 66	$5,726 24

During 1926 the company reported 736 consumers and 810 for 1927.

F. J. Keys, appearing as a witness for the Public Utilities California Corporation, estimates the operating revenues for 1928 at $18,000 and the operating expenses, including $1,500 for depreciation, at $9,500 leaving $8,500 available for interest, dividends or surplus. The reduction in operating expenses is brought about by consolidating the operation of the properties with the water properties at Roseville and adjusting the depreciation charges.

A detailed description of the properties which the North Sacramento Light and Water Company asks permission to sell is contained in

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Exhibit "C" which is a report and analysis in the matter of the appraisal of the properties of the company prepared by the Loveland Engineers, Inc. In this report the Loveland Engineers submit the following figures:

Reproduction cost new	$174,145 00
Reproduction cost new, less depreciation	155,042 00
Estimated original cost	149,063 00
Estimated original cost, less accrued depreciation reserve	136,832 00

The above figures include the following allowances for intangible capital:

Item	Reproduction cost	Original cost
Organization and preliminary expenses	$3,000 00	$3,000 00
Franchises	1,500 00	500 00
Water rights	1,000 00	------
Cost of acquisition of land and title searches	1,504 00	1,504 00
Going concern value	12,500 00	12,500 00
Total	$19,504 00	$17,504 00

In Exhibit 9 prepared by R. E. Savage, an assistant engineer for the Commission, the estimated original cost of the properties, exclusive of intangible capital and organization expenses, is reported at $119,863. This figure is based upon an appraisal of the properties of the North Sacramento Light and Water Company submitted in connection with Application No. 11201. In that proceeding the estimated historical cost of the North Sacramento Light and Water Company as of January 1, 1925, was estimated at $79,071. This, however, included $16,224 representing nonoperative property. Mr. Savage adjusted the appraisal submitted in connection with Application No. 11201 so as to reflect the cost of property retired and then added the cost of additions and betterments and the present value of lands. His figure of $119,863 does not include any allowance for organization, franchises or rights which the company has to occupy streets in North Sacramento, nor street improvement assessments which the purchaser has assumed to pay. We believe that an allowance for organization expenses, franchises and street assessments should be added to the $119,863.

Giving consideration to these items and the record in this proceeding, we find the estimated original cost of the properties for the purpose of this application to be $130,000. Deducting from this the reserve for accrued depreciation of $12,231 leaves a balance of $117,769 against which the order herein will authorize the issue of $117,800 of stock.

ORDER.

North Sacramento Light and Water Company having asked permission to sell its properties to the Public Utilities California Corporation, and Public Utilities California Corporation having asked permission to acquire such properties and issue in payment therefor $144,600 of

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its common capital stock, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the transfer of the properties is in the public interest and that Public Utilities California Corporation should be permitted to issue in payment for such properties not exceeding $117,800 of its common capital stock, that the money, property or labor to be procured or paid for by the issue of such stock is reasonably required by said company and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expense or to income, and that this application should be granted as herein provided and not otherwise; therefore,

It is hereby ordered, as follows:

1. North Sacramento Light and Water Company may sell to the Public Utilities California Corporation its business and properties more particularly described in Exhibit "C" filed in this proceeding.

2. Public Utilities California Corporation may acquire the aforesaid properties and issue in payment therefor not exceeding $117,800 of its common capital stock.

3. This application, in so far as it involves the issue of $26,800 of common stock be and the same is hereby dismissed without prejudice.

4. Public Utilities California Corporation, if it acquires the aforesaid properties, may not charge to its fixed capital account more than $130,000. If it pays for the properties more than the $117,800 of common stock, it must charge the difference between the $117,800 and the price paid, to its corporate surplus account.

5. Public Utilities California Corporation shall file with the Railroad Commission reports such as are required by the Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

6. Within thirty days after the acquisition of the properties herein referred to, Public Utilities California Corporation shall file with the Railroad Commission a certified copy of the deed under which it acquires and holds title to said properties and shall also file with the Commission a statement showing the date on which it acquired the properties and the date on which it took possession of the same.

Dated at San Francisco, California, this eighteenth day of May, 1928.

DECISION No. 19781.

IN THE MATTER OF THE APPLICATION OF J. W. RITZMAN FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AN AUTO TRUCK FREIGHT TRANSPORTATION SERVICE, AS A COMMON CARRIER, BETWEEN LOS ANGELES, LOS ANGELES HARBOR DISTRICT AND OTHER POINTS IN LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO AND IMPERIAL COUNTIES.

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Application No. 14379.
Decided May 18, 1928.

CERTIFICATES—AUTO TRUCK.—Application of J. W. Ritzman to operate automotive freight service between Los Angeles and other points, denied.

CERTIFICATES—GROUNDS FOR REFUSING—PRIOR ILLEGAL OPERATION.—The Commission will not grant a certificate to an applicant who has wilfully operated as a common carrier for compensation without first having obtained a certificate.

John M. Joyce, for *Thelen and Marrin*, for Applicant.
James L. Ronnow, for City Attorney Jess E. Stephens, City Attorney of Los Angeles, and for Board of Public Utilities of the City of Los Angeles, Protestants.
H. J. Bischoff, for Imperial Valley-Los Angeles Express and for Motor Service Express, Protestants.
L. C. Zimmerman, for Southern Pacific Company, Protestant.
Kidd, Schell and Delamer, by *C. F. H. Delamer*, for Keystone Express, Protestant.
F. H. Asbury, for Asbury Truck Company, Protestant.
J. T. Puckett, for Wilmington Transfer and Storage Company, Protestant.
Phil Jacobson, for Tolson Transportation Company, Protestant.
T. W. Woods and *Edward Stern*, for American Railway Express Company, Protestant.

BY THE COMMISSION.

OPINION.

The above entitled application having been filed herein, the matter was set for hearing at Los Angeles on April 10th before Examiner Rowell. Prior to the hearing an affidavit was filed by certain protestants alleging that the applicant had for at least two years preceding been operating as a common carrier in wilful violation of law. At the outset of the hearing said protestants moved that the question of applicant's qualifications and fitness to engage in the business of transportation as a common carrier be first heard and determined by the Commission before the taking of any evidence pertaining to the public need for the proposed service. Thereupon evidence pertaining to such issue was introduced and, upon motion, the one issue submitted for decision.

The evidence introduced by protestants clearly shows that applicant has wilfully operated as a common carrier without obtaining a certificate from this Commission so to do. He has operated motor trucks for hire between Los Angeles and points in the Imperial Valley, transporting commodities of various descriptions for numerous persons, and holding himself out to the public as engaged in the general trucking business. The applicant admits that his business is extensive and that he accepts all business which he considers desirable. He admits also that in only a few cases has he entered into any specific contracts.

On several occasions his trucks were stopped by police officers of the city of Los Angeles and contents inspected, revealing shipments from various dealers in Los Angeles, largely grocers and hardware dealers, consigned to numerous persons at Imperial Valley points. The trucks

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departed from his place of business in Los Angeles. Mr. Ritzman, it appears, owned none of these trucks, but he was seen about his depot, personally assisting in the conduct of the business. All shipping papers were executed in the name of the J. C. Ritzman Truck Company. Three police officers, as well as the service inspector of the Railroad Commission, testified directly to these facts.

Mr. Ritzman testified that he disposed of his business about February 1, 1928, to one Harry Ball. An attempt was made by protestants to prove that the transfer was a mere fiction and that Mr. Ritzman continues to operate under an assumed name. It was shown also that Mr. Ritzman has twice been arrested and found guilty by the municipal court of the city of Los Angeles for operating within the city without having first obtained a permit so to do. We shall not consider the weight or the materiality of such evidence. We are convinced that apart therefrom there is a sufficient showing that the applicant has for several years conducted a general transportation business as a common carrier for compensation, between fixed termini or over a regular route, in wilful violation of the Auto Stage and Truck Transportation Act. To characterize his service as that of a contract or private carrier is a mere pretense.

This Commission has frequently refused to grant a certificate of public convenience and necessity to an applicant who has wilfully operated as a common carrier for compensation without having first obtained a certificate from this Commission. We are of the opinion that, under the showing of protestants that this applicant has continuously operated in violation of law, we would not be justified in granting to him a certificate of public convenience and necessity, and find, therefore, that public convenience and necessity does not require his proposed operation.

ORDER.

The above entitled application having been filed, the matter coming on to be heard, and motion having been made by protestants to deny the application upon the evidence received, said motion having been duly submitted and the Commission being fully advised, and basing its order on the findings of fact and the conclusions contained in the foregoing opinion the said motion is hereby granted; and

It is hereby ordered, that the application of J. W. Ritzman be and the same is hereby denied.

Dated at San Francisco, California, this eighteenth day of May, 1928.

DECISION NO. 19782.

IN THE MATTER OF THE APPLICATION OF MOTOR TRANSIT COMPANY FOR AN ORDER PERMITTING A REVISION OF PASSENGER FARES ON ITS LOS ANGELES-DOWNEY LINE AND ON ITS PASADENA-LONG BEACH LINE.

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Application No. 11455.
Decided May 21, 1928.

RATES—AUTO STAGES.—Motor Transit Company authorized to revise passenger fares on its Los Angeles-Downey line and Pasadena-Long Beach line, the proceeding being held open for a supplemental order, dependent upon actual results of operation.

H. W. Kidd, for Applicant.

BY THE COMMISSION.

SECOND SUPPLEMENTAL OPINION.

This is a second supplemental application by the Motor Transit Company, a corporation, filed August 23, 1927, and as amended, seeking authority to readjust passenger fares, one-way, round-trip, 10-ride and 30-ride between points on its line extending from Los Angeles to Downey, County Farm and Norwalk, hereinafter called the Downey line, and on its lines extending from Pasadena to Long Beach, hereinafter called the Long Beach line.

The Downey line extends from Los Angeles to County Farm and Norwalk via Downey, a distance of 16.5 and 18 miles respectively; and the Long Beach line from Pasadena to Long Beach via three separate routes, the first via Allendale street and Downey, a distance of 32.8 miles; the second via El Monte and Downey, a distance of 42.1 miles; and the third via El Monte and Norwalk, a distance of 43.5 miles.

A public hearing was held before Examiner Geary at Los Angeles on October 19, 1927, and the proceeding duly submitted. Subsequent to this submission applicant petitioned in Application No. 14293 for a certificate of public convenience and necessity to establish an additional route between Pasadena and Long Beach via Atlantic avenue, substantially paralleling the proposed automobile stage operations of the Pacific Electric Railway between the same points, Application No. 14234. Due to the competitive conditions existing between Pasadena and Long Beach via the various routes we reopened Application No. 11455 and consolidated it for further hearing with Applications Nos. 14234 and 14293.

Public hearings were held before Examiners Geary and Williams at Los Angeles, Long Beach and Pasadena February 6 to 10 inclusive, and at Los Angeles March 19 and 20, 1928, Application No. 11455 being submitted on the latter date.

The present fares on both the Downey and Long Beach lines have been in effect since April 20, 1927, and were authorized in the instant proceeding by Decisions Nos. 15893 and 18005, January 22, 1926, and February 11, 1927, respectively. These one-way fares are based approximately 2½ cents per mile, with round-trip 85 per cent of two one-way

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fares, 10-ride 75 per cent of ten one-way fares and 30-ride 60 per cent of thirty one-way fares.

Applicant testified that while the gross revenues increased to some extent under the fares authorized, they have failed to produce sufficient revenue to cover even the cost of operations. Exhibits submitted in evidence at the different hearings show that during the period extending from May to December, 1927, under the fares authorized by Decisions Nos. 15893 and 18005, the operating revenues on the Downey line were $14,400.69 and the operating expenses $19,041.97, a loss of $4,641.28; and on the Long Beach line during the same period the operating revenues were $32,193.04 and operating expenses $41,653.39, a loss of $9,460.35. Stated another way, the revenue per car mile on the Downey line amounted to 20.33 cents and the operating expenses per car mile 26.88 cents, while on the Long Beach line the revenue per car mile totaled 19.24 cents and the operating expenses per car mile 24.90 cents.

For some time past the lines here at issue, as evidenced by the annual reports and the exhibits, have been operated at a loss, we having found by Decision No. 15893, *supra*, that the Downey line during the years 1923 and 1924 and for the first eight months of 1925 had an actual operating deficit of $15,371.23, and the Long Beach line April 11, 1924, to September 23, 1925, sustained an actual operating loss of $42,587.17. The annual report of the Motor Transit Company system for the year 1926 showed a deficit of $171.089.50 and for 1927 a deficit of $69,156.87.

Applicant is not here seeking an adjustment to net a reasonable return, or in fact any return, on the investment devoted to the operation of the routes in issue, and its general manager testified that the primary purpose at this time was to secure a uniform and reasonable basis of fares, in a measure to relieve the financial burden under which the properties are now operating.

This proposed fare structure is based on a combination of mileage and arbitraries by determining the fare from the principal terminals to the first point at 2½ cents per mile, with a minimum fare of 10 cents, and from this point building up the fares to the points beyond by adding 5 cents for each two miles or fraction thereof, with round-trip fares 85 per cent of two one-way fares, 10-ride fares 75 per cent of ten one-way fares, and 30-ride fares 60 per cent of thirty one-way fares.

The fares proposed in the instant proceeding are on substantially the same basis as those first applied for in the original application which the Commission refused to authorize because the plan then submitted would have created inconsistent and discriminatory situations, resulting in one-way fares predicated upon 2½ cents per mile in some instances and 5 cents per mile and over in others, depending upon the distances between the fare-breaking points, which were then not uniformly spread at two miles apart. These inconsistencies were also reflected to a

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greater degree in the other classes of fares. Since the original decision, No. 15893, January 22, 1926, applicant has rearranged the fare-breaking points in such a manner that they are now practically two miles apart, thus removing the objectionable features found to exist at the time of the earlier hearings.

The record shows conclusively and we find that the volume of the present fares is insufficient to pay the actual out-of-pocket costs of operation.

As heretofore stated, this proceeding was submitted October 29, 1927, and was reopened because the Pacific Electric Railway Company and the Motor Transit Company in Applications Nos. 14234 and 14293 sought a certificate of public convenience and necessity to operate an automobile stage service between the cities of Pasadena and Long Beach, creating an entirely new route via Atlantic avenue in the territory south of Belvedere Gardens.

Applicant alleges in Application No. 14293 that the proposed new service via Atlantic avenue will not disturb but will result in the furnishing of an additional stage service to the traveling public at points south of Belvedere Gardens where no convenient services are now being rendered. The fares proposed via the Atlantic avenue line are practically the same on a distance basis as those proposed in Application No. 11455. It is apparent from the record that the Atlantic avenue line, if authorized, and established either by this applicant or the Pacific Electric Railway, will to a greater or less extent affect the revenue via the present lines in connection with the movement of passengers between the termini of Pasadena and Long Beach.

In view of the fact that the adjustments in the instant proceeding bring about no radical changes and the fares are practically those proposed in Applications Nos. 14234 and 14293, this application to adjust the fares via the three routes now in operation should be disposed of at this time, without prejudice, however, to any different conclusion that may be reached in the final determination of Applications Nos. 14234 and 14293.

After careful consideration of all the facts of record we are of the opinion and find that applicant should be authorized to establish on its Downey and Long Beach lines between the points here involved the one-way, round trip, 10-ride and 30-ride fares set forth in Exhibit No. 5 submitted at the hearing held March 19, 1928.

Applicant shall file with the Commission on or before the twentieth day of each month, for a period of not less than six months, a statement for the previous month showing in detail the total revenue received under the fares herein authorized and what would have accrued under the fares now in effect, also the total operating expenses, depreciation and taxes and the net operating revenue. The revenue and

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expenses should be compiled in conformity with the Commission's order of January 1, 1922, Uniform Classification of Accounts.

This proceeding will be held open for a supplemental order should the actual results obtained make such action necessary.

ORDER.

This application having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that applicant, Motor Transit Company, be and it is hereby authorized to establish on not less than five days' notice to the Commission and to the public on its Los Angeles-Downey and Pasadena-Long Beach lines between the points here involved, one-way, round-trip, 10-ride and 30-ride fares as set forth in Exhibit No. 5, submitted at the hearing held March 19, 1928.

It is hereby further ordered, that applicant, Motor Transit Company, file with this Commission on or before the twentieth day of each month, for a period of six months after the fares herein authorized become effective, a statement showing for the preceding month the number of passengers handled between all points on its lines here under consideration, the earnings under the old and new fares and the revenue and expenses, the information as to the revenue and expenses to be compiled in conformity with the Commission's order effective January 1, 1922, Uniform Classification of Accounts.

It is hereby further ordered, that this proceeding be held open for a supplemental order should the Commission deem further action necessary.

Dated at San Francisco, California, this twenty-first day of May, 1928.

DECISION No. 19783.

IN THE MATTER OF THE APPLICATION OF F. W. GOMPH, AGENT, TO MAKE CERTAIN CHANGES IN RATES FOR TRANSPORTATION OF SAND, ROCK AND GRAVEL, IN CONNECTION WITH TARIFF C. R. C. No. 335.

Application No. 13834.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING PUBLICATION OF CERTAIN RESTRICTIONS IN RATES IN SOUTHERN PACIFIC COMPANY'S TARIFF 330-F, APPLYING ON SAND, ROCK AND GRAVEL.

Application No. 13835.

Decided May 21, 1928.

TARIFFS—AMENDMENT.—Pacific Freight Tariff Bureau and Southern Pacific Company authorized to amend tariffs re crushed rock, sand and gravel.

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RATES—RAILROAD—DISTANCE SCALE—DEVIATIONS.—When distance scales of rates are established, the deviations from such scales should be consistent and without discrimination.

J. E. Lyons, J. L. Fielding, F. W. Mielke and *H. W. Klein*, for Applicants.
Gleeson, Cleeve and Van Dine, for Blake Brothers Company, a corporation, Intervener.

BY THE COMMISSION.

OPINION.

These are applications filed by F. W. Gomph, agent, Pacific Freight Tariff Bureau and by the Southern Pacific Company under section 63 of the Public Utilities Act, seeking authority to amend Pacific Freight Tariff Bureau Tariff 166-B, C. R. C. 335, and reissues thereof, and Southern Pacific Tariff 330-F, C. R. C. 3112, so as to provide that the provisions of Southern Pacific Circular 198-L, C. R. C. 3100, will not apply in connection with rates named in these tariffs.

A public hearing was held before Examiner Geary at San Francisco September 1, 1927, and the matters submitted at that time. Upon request of certain interested shippers the proceedings were reopened, a final hearing being held April 17, 1928, and having been duly submitted are now ready for our opinion and order. The applications were by stipulation heard upon a common record and will be disposed of in one report.

Rates will be stated in cents per ton of 2000 pounds.

Pacific Freight Tariff Bureau Tariff 166-B, C. R. C. 335 and reissues thereof name the joint rates on crushed rock, sand and gravel, and the rates on the same commodities to points on the rails of the Southern Pacific are published in its Tariff 330-F, C. R. C. 3112. These tariffs also contain distance commodity rates, which are generally observed in determining the charges on crushed rock, sand and gravel, the rates being governed by Southern Pacific Circular 198-L, C. R. C. 3100, which circular provides that the rates in effect from and to Oakland will also apply from and to Richmond. The distance between Oakland and Richmond is approximately 11 miles, therefore at points south and west of Oakland the Oakland rates applicable at Richmond are less than would apply by use of the actual distance rates to and from Richmond. This deviation from the scale, applicants allege, results in unjustifiable preferences to certain shippers, and the instant application is intended to remove this preference by amending the line haul tariffs canceling the provision now authorizing the use of Southern Pacific Circular 198-L in making the Richmond rates. Applicants further contend that the publication of these line haul rock rates was a tariff error, and refers to various commodity rates not subject to such circular, representative of which are the distance rates on live stock in Southern Pacific Tariff 645-D, C. R. C. 3118, and the distance scale of class rates in Southern Pacific Tariff 917-D, C. R. C. 2929.

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Blake Brothers Company, the protesting intervener, operates a crushed rock plant at Richmond, having shipping facilities on the San Francisco Bay and the services of the Richmond Belt Railway and the Key System Transit Company, and therefore can move the tonnage output either by rail or water. Their operations were commenced at Richmond about the year 1905 and the plant represents an investment of approximately $750,000. These protestants offered no serious objection to the proposed adjustment except to points on the peninsula, San Francisco and south thereof. They contend these rates should not be disturbed because the economic distribution of crushed rock, due to water and quarries competition, is limited in this territory to a radius of approximately 50 miles, based on the distance scale of rates. The distances from Oakland to the peninsular territory being less than from Richmond, results in rates 10 cents below the scale to certain points. The water-compelled rates to San Francisco from Eliot, Livermore, Coyote and Logan are routed through Redwood and are held as maximum at the intermediate points, many of them being 10 cents lower than the scale. Intervener contends the adjustments sought will prevent competition because applicant does not also propose to adjust the peninsular rates from the other rock shipping points.

When distance scales of rates are established the deviations from such scales should be consistent and without discrimination.

Upon this record and after consideration of all the matters and things involved we are of the opinion, and so find, that these applications to amend Pacific Freight Tariff Bureau Tariff 166-B, C. R. C. 335 and reissues thereof, and Southern Pacific Tariff 330-F, C. R. C. 3112, so as to provide that the provisions of Southern Pacific Circular 198-L, C. R. C. 3100, will not apply in connection with certain rates on crushed rock, sand and gravel named in such tariffs, are justified and reasonable except from Richmond to points on the Coast Division of the Southern Pacific Company—San Francisco and south thereof.

ORDER.

These applications having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which is hereby referred to and made a part hereof;

It is hereby ordered, that the applications of F. W. Gomph, agent, Pacific Freight Tariff Bureau, and Southern Pacific Company to amend Pacific Freight Tariff Bureau Tariff 166-B, C. R. C. 335 and reissues thereof, and Southern Pacific Tariff 330-F, C. R. C. 3112, so as to provide that the provisions of Southern Pacific Circular 198-L, C. R. C. 3100, will not apply in connection with rates named in such tariffs, be and the same are hereby granted in so far as same do not increase

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rates from Richmond to coast division points of the Southern Pacific Company, San Francisco and south thereof.

Dated at San Francisco, California, this twenty-first day of May, 1928.

DECISION No. 19789.

IN THE MATTER OF THE APPLICATION OF KEY SYSTEM TRANSIT COMPANY, INC., FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING THE ISSUANCE OF A NOTE TO COVER THE PURCHASE OF ONE STRAIGHT GAS URBAN TWIN MOTOR COACH.

Application No. 14694.

Decided May 22, 1928.

SECURITY ISSUES—NOTE.—Key System Transit Company authorized to issue its note for $8,768 to Twin Coach Corporation.

Brobeck, Phleger and Harrison, for Applicant.

BY THE COMMISSION.

ORDER.

Key System Transit Company has applied to the Railroad Commission for permission to issue a note to the Twin Coach Corporation in the sum of $8,768.

The company reports that in connection with the conduct of its business of transporting passengers, it requires and desires to purchase one straight gas urban twin coach motor bus and that to that end it has entered into a conditional sales agreement with Twin Coach Corporation of New Jersey for the purchase for $11,690 of such a bus. Of the total price, $2,922, under the terms of the agreement, is payable on May 25, 1928, in cash and the balance, $8,768, is to be evidenced by an installment note payable in twenty-four installments, with interest at the rate of 6 per cent per annum on unpaid balances. Copies of the conditional sales agreement and of the installment note have been filed with this application.

The Commission has considered applicant's request and is of the opinion that this is a matter in which a public hearing is not necessary, and that the money, property or labor to be procured or paid for through the issue of the note is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income; therefore,

It is hereby ordered, that Key System Transit Company be and it is hereby authorized to issue to the Twin Coach Corporation its promissory note in the principal amount of $8,768 payable in twenty-four monthly installments with interest on the unpaid principal at the rate of 6 per cent per annum, for the purpose of financing in part the cost of the motor bus referred to herein.

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It is hereby further ordered, that applicant shall keep such record of the issue of the note and of the disposition of the proceeds as will enable it to file within thirty days thereafter a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

It is hereby further ordered, that the authority herein granted shall become effective when applicant has paid the minimum fee prescribed by section 57 of the Public Utilities Act, which fee is $25.

Dated at San Francisco, California, this twenty-second day of May, 1928.

DECISION No. 19795.

IN THE MATTER OF THE APPLICATION OF BASS TELEPHONE LINES, UNINCORPORATED, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, AUTHORIZING THE ESTABLISHMENT OF EXCHANGE SERVICE AREAS, THE ADJUSTMENT OF LOCAL EXCHANGE SERVICE AND THE ADJUSTMENT OF RATES FOR EXCHANGE, TOLL AND TELEGRAPH SERVICE WITHIN PORTIONS OF SHASTA COUNTY, CALIFORNIA, AND THE FILING OF RATES PROVIDING THEREFOR.

Application No. 12786.

Decided May 23, 1928.

RATES—TELEPHONE—EXCHANGE AREAS.—Bass Telephone Lines authorized to establish exchange areas and to adjust rates.

DISCRIMINATION—PARTICULAR UTILITIES—TELEPHONE.—When a local telephone system is operated as two exchange areas, in one of which switching is performed by another company, and subscribers connected to central offices of the local company have unlimited switching privileges, while calls originating in the other area are charged specified toll rates, the charge depending upon the originating point of the message, discrimination results.

RATES—TELEPHONE—RURAL SERVICE.—In a sparsely settled territory, it is important that charges for exchange service be kept as low as possible, for communication by telephone may frequently be an absolute necessity.

RATES—TELEPHONE—TOLL SERVICE.—It is not proper to fix toll telephone rates on a one-minute initial period basis, as initial toll rates in California are generally based on a three-minute initial period.

Geo. W. Johnstone and *A. L. Wilson*, for Applicant.

BY THE COMMISSION.

OPINION.

Bass Telephone Lines, applicant in this proceeding, hereinafter referred to as the applicant, asks that the Railroad Commission make its order authorizing applicant to establish exchange service areas, to adjust its exchange telephone service in accordance therewith and to file and make effective schedules of rates for exchange and toll telephone and telegraph service as set forth in its application.

A public hearing in this matter was held before Examiner Rowell at Montgomery Creek, Shasta County, on January 24 and 25, 1928.

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Applicant furnishes telephone and telegraph service in an area in Shasta County, northeast of Redding, California, including communities and points known as Buckeye, Stillwater, Bella Vista, Palo Cedro, Millville, Whitmore, Oak Run, Fern, Ingot, Round Mountain, Montgomery Creek, Burney, Wengler, Big Bend Hot Springs, and Pit No. 1 Power House of the Pacific Gas and Electric Company. Applicant's toll telephone line also extends to Fall River Mills, at which point connection is made with the lines of other utilities. Interconnections between lines of applicant are made at central offices located at Montgomery Creek, Burney and Ingot and at switching stations located at various other points. Exchange telephone lines serving Buckeye and Stillwater, which are detached from the remainder of applicant's system, have direct connection to the switchboard of The Pacific Telephone and Telegraph Company at Redding and all switching for such lines is performed by that company.

In so far as applicant's regular subscribers are concerned, the entire system is operated as two exchange areas; one, that area for which switching is performed by the Pacific Company and the other, the remainder of the territory served. Certain subscribers, whose lines are connected to the central offices of applicant, have unlimited switching privileges, commonly called free service, in the major portion of applicant's system at the regular subscriber's rates. Charges at specified toll rates for service between points on the system are made to all those who are not regular subscribers. This method of operation results in discrimination. For example, a subscriber at Montgomery Creek may originate a message to Redding for no additional charge, whereas, he or others would be required to pay the regular toll rate when calling his home in Montgomery Creek from a Pacific Company station in Redding. Thus the charge depends upon the originating point of the message.

Applicant proposes to increase its revenue and at the time remove discrimination by dividing its territory into several exchange areas, each to be served from a central office, and by charging all its patrons alike for use of the toll service between any two of such areas. Applicant's territory is a mountainous country in which settled communities are widely separated. In such an area, the cost of rendering telephone service, per station served, will necessarily be higher than in more thickly populated areas, and it would appear that by the adoption of the proposed plan of dividing the system into several exchange areas, the applicant may, in a manner equitable to the subscribers served, obtain the increased revenue necessary for the proper conduct of its business. It seems certain, from the evidence presented at the hearing, that if an attempt were made to secure additional revenue by increasing subscribers' rates generally on the present basis of operation, many sub-

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scribers would be compelled for financial reasons to discontinue telephone service entirely, and the utility would receive a diminished rather than an increased return. In a sparsely settled territory, as that under consideration, it is particularly important that the charges to subscribers for exchange telephone service be kept as low as possible, for communication by telephone may, under such conditions, frequently be an absolute necessity. It would seem that in such a territory the maximum revenue to the utility would be obtained by adopting a rate schedule which will induce residents to avail themselves of exchange telephone service, and which will exact from the users of toll telephone service the charges which that portion of the business should properly bear.

Applicant submitted in evidence a valuation of its properties on the historical reproduction cost basis prepared by Mr. A. L. Wilson, showing a total value of used and useful telephone property, including materials and supplies, of $46,355.86. Mr. F. M. Casal, assistant engineer on the Commission's staff, presented a valuation of the telephone properties showing a total, on the historical reproduction cost basis, including materials and supplies, of $27,573. Applicant did not contest either the valuation or estimated rate base figures submitted by the Commission's engineer. The evidence showed, however, that certain additions and betterments necessarily would be made if contemplated improvements in applicant's system were to be completed. An estimate of the necessary additions was made and submitted by Mr. Wilson, subsequent to the hearing, showing a total of $2,178.54. Further additions also are contemplated in connection either with the purchase by applicant of certain subscriber-owned telephone instruments or replacement of such instruments by others owned by applicant. The rate base found reasonable in this proceeding for the period, April 1, 1928, to March 31, 1929, is as follows:

Valuation as of November 1, 1925, less materials and supplies	$27,050 00
Additions and betterments, November 1, 1925 to April 1, 1928	530 00
Estimated additions and betterments, April 1, 1928 to September 30, 1928	2,340 00
Materials and supplies and working cash	870 00
Total	$30,790 00

Applicant's present exchange telephone rates for party line service vary from $18 per year for unlimited switching over the entire territory served, including connection with the Redding subscribers of The Pacific Telephone and Telegraph Company, to $9 per year for similar service in a restricted area in cases where the subscriber owns his telephone instrument and takes advantage of the discount offered for prompt payment. Two toll telephone rates are at present effective, one of thirty-five cents and one of twenty-five cents; the larger rate applies to messages between Redding and either Carbon, Fall River Mills or Pit No. 1, while the smaller rate is applicable to messages

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between any other two points on applicant's system. Both rates contemplate conversations unlimited as to time. Evidence introduced at the hearing, both by applicant and the Commission's engineer, indicated that the utility is receiving insufficient revenue to pay reasonable operating expenses and that applicant is entitled to a greater revenue.

Applicant proposes to establish a primary rate area for each of the exchanges which it asks authority to create, and to file and make effective exchange telephone rates for individual line service within such primary rate areas, and rates for ten-party line service within the several exchange areas. The rates, which applicant has proposed, are $4.25 per month for individual line desk set residence service and $3.25 per month for ten-party line desk set residence service; business service, according to applicant's plan, would be $1 per month greater in the case of the former and $0.50 per month greater in the case of the latter. Applicant further proposed toll telephone rates which are based generally on distances between toll stations and provide for an initial rate applying to an initial period of conversation of one minute, with corresponding overtime charges for messages continuing for a longer time. Applicant requests that the initial charge for a ten-word telegram between any two points on its system be fixed at the same amount as the initial rate for toll telephone service between those points.

Although both applicant and the Commission's engineer submitted exhibits showing that applicant's proposed rates would produce approximately $5,000 additional revenue per annum, provided the present use of the service were to continue without change after the rate adjustment, no estimate of probable loss of business due to the application of the higher rates was introduced. It appears, from the expression of opinion made by applicant's subscribers and others who are users of the toll service, that the actual result of making effective applicant's proposed rates might be quite different from that shown in the above mentioned exhibits. Objection was made by users particularly against the proposal of applicant to limit the initial period of toll conversations, to which the initial rate applies, to one minute. We believe that it is not proper to fix toll telephone rates on a one-minute initial period basis at this time largely for the reason that initial toll rates throughout the State of California, in general, are based on a three-minute initial period. On the other hand, it appears unreasonable that applicant should be required to offer and furnish the three classes of toll telephone service as provided by the larger toll companies. Toll telephone rates, as authorized in this proceeding, are based on an airline measurement between toll points, and a three-minute initial period, and indicate

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but one initial rate applicable to messages of any of the three classes usually offered.

In the final determination of the spread of rates, it appears that greatly increased charges should not be made for exchange telephone service, as those subscribers who continue to use exchange and toll telephone service will be required to pay higher total charges under the plan of subdivision of applicant's territory, as set forth in the order following, than those that they pay under the unlimited switching plan now in effect, due to amounts which will be charged for the use of the toll lines. Furthermore, as was brought out at the hearing, service on some of applicant's lines is unsatisfactory, due principally to disturbances caused by neighboring circuits carrying alternating current at high voltage. Applicant contemplates converting to metallic lines certain of its circuits which are the most seriously affected by inductive interference and the circuits so reconstructed should afford service materially better than that rendered by means of the present "grounded" lines. Exchange rates for service rendered over "grounded" lines will be fixed herein at a slightly higher level than those now effective. Rates for service over metallic lines will be somewhat higher than those set for grounded line service.

The rates for telephone and telegraph service herein found reasonable are set forth in Exhibit "A" attached to the order following this opinion. Although these rates are expected to yield only a moderate return on applicant's investment, it is our opinion that further increases in rates over and above those contemplated in the rates herein fixed would result in no greater revenue and might produce a decreased return. The estimated results of operations for the period April 1, 1928, to March 31, 1929, are shown in the following table. These estimates contemplate losses due to regrading and discontinuances and are based on the assumption that the rates shown in Exhibits "A" and "B" will be continuously in effect during the period selected.

Exchange revenue	$3,540 00	
Toll revenue	3,760 00	
Total revenue		$7,300 00
Operating expense less depreciation annuity	$5,100 00	
Depreciation annuity	1,020 00	
Total operating expenses		6,120 00
Net telephone operating revenue		$1,180 00
Taxes	$400 00	
Uncollectible bills	70 00	
Total deductions from net operating revenue		470 00
Net for interest		$710 00

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Applicant proposed primary rate areas in the form of circles to be used in connection with its rate schedule, and submitted a map indicating proposed exchange area boundaries. The Commission's engineer also submitted in evidence a map showing the proposed exchange area boundaries and offered suggestions as to proposed primary rate area boundaries, which he believed would be easier to administer than the circles proposed by applicant. Maps showing exchange area boundaries of all exchanges and primary rate area boundaries for Burney, Ingot and Montgomery Creek exchanges, which are found reasonable, are set forth in Exhibit "C" attached to the order following. No primary rate area has been fixed for Bella Vista exchange as such is considered unnecessary at the present time.

Applicant requested at the hearing that the point where its toll lines are proposed to be connected to the lines which another utility in another proceeding before the Commission seeks to operate to Westwood be designated Carbon Junction for rate making purposes only. It appears that the fixing of such a toll point as requested is reasonable and necessary in the computation of through rates beyond such point. The order following will provide for rates applicable to toll messages routed by way of Carbon Junction.

ORDER.

Bass Telephone Lines having petitioned the Railroad Commission for authority to establish exchange service areas, to adjust its exchange telephone service in accordance therewith and to establish and make effective and to file schedules of rates for exchange telephone service within said exchange service areas, and to establish, make effective and file schedules of rates for toll telephone and telegraph service, a public hearing having been held and the matter being now under submission and ready for decision:

The Railroad Commission hereby finds as a fact that the rates and charges for exchange telephone, toll telephone and telegraph service at present in effect by Bass Telephone Lines are inadequate, unjust and unreasonable, and that the rates and charges for these services contained in this order are just and reasonable.

Basing its order on the foregoing finding of fact and on other findings and statements of fact contained in the opinion which precedes this order;

It is hereby ordered, that Bass Telephone Lines shall

(1) Charge and collect the rates for exchange telephone service set forth in Exhibit "A" attached hereto and made a part of this order, for service rendered on and after July 1, 1928.

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(2) Charge and collect the rates for toll telephone and telegraph service set forth in Exhibits "B" and "C" attached hereto, and made a part of this order, for service rendered on and after July 1, 1928.

(3) Establish boundaries of the exchange areas of the Bella Vista, Burney, Ingot and Montgomery Creek exchanges and the Redding service area as shown on maps contained in Exhibit "D" attached hereto, and made a part of this order, effective as of July 1, 1928.

(4) Cancel all schedules of rates for service not included in Exhibits "A," "B" and "C" attached hereto, effective July 1, 1928.

(5) Submit for filing with the Railroad Commission on or before June 25, 1928, the rates set forth in Exhibits "A," "B" and "C" attached hereto.

(6) Submit for filing with the Railroad Commission on or before June 25, 1928, maps showing primary rate area boundaries and exchange area boundaries as shown in Exhibit "D" attached hereto.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-third day of May, 1928.

EXHIBIT "A."

EXCHANGE TELEPHONE SERVICE RATES.

Exchange Service Schedule No. A-1.

Individual Line Service.

Applicable to individual line flat rate service furnished within any one of the primary rate areas of the Burney, Ingot and Montgomery Creek exchanges.

Rate.	Rate per station per month: Business service	Residence service
Each individual line station, desk set	$4 25	$3 25
Each extension station, desk set	1 25	1 00

Wall set equipment is furnished at the above rates less 25 cents per month.

Conditions.

(1) Extension stations at the above rates will be installed in the same premises as the primary station.
(2) Service under this schedule is furnished by means of full metallic circuits.

Exchange Service Schedule No. A-2.

Party Line Service.

Applicable to party line flat rate service furnished within any one of the exchange areas of the Bella Vista, Burney, Ingot and Montgomery Creek exchanges and within the Redding service area.

Rate A.	Rate per station per month: Business service	Residence service
Each party line station, desk set	$2 25	$1 75

Wall set equipment is furnished at the above rates less 25 cents per month.
This schedule, Rate A, is effective for service furnished over one-wire "grounded" circuits.

Rate B.	Rate per station per month: Business service	Residence service
Each party line station, desk set	$3 25	$2 75

Wall set equipment is furnished at the above rates less 25 cents per month.
This schedule, Rate B, is effective for service furnished over full metallic circuits.

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Conditions.

(1) Rate A is applicable until such time as the company is able to furnish full metallic service and will not be applied as an optional schedule after metallic service is available.
(2) Rate B will be applied only when all stations connected to any one line are operated over a fully metallicized circuit.
(3) In no case will both Rate A and Rate B apply simultaneously to stations connected to any one circuit.

Exchange Service Schedule No. A-3.

PAY STATION SERVICE.

Rate.

Each exchange message placed from one of the company's public pay stations $0 10

Exchange Service Schedule No. A-4.

SUPPLEMENTAL EQUIPMENT.

Rate.

	Installation charge	Rate per month
Ordinary extension bell	$1 50	$0 50
Loud ringing gong	1 50	75

Conditions.

(1) Extension bells and gongs will be furnished only in connection with individual line service.

EXHIBIT "B."

TOLL TELEPHONE SERVICE RATES.

Toll Service Schedule No. B-1.

General Service.

The following listed initial rates are effective for toll telephone service over the long distance circuits of Bass Telephone Lines.

(1) *Initial Rates.*

	BETWEEN							
and	Redding	Pit No. 1	Montgomery Creek	Ingot	Fall River Mills	Carbon	Carbon Junction	Burney
Bella Vista	$0 20	$0 50	$0 30	$0 20	$0 50	$0 50	$0 50	$0 45
Burney	50	20	25	35	25	20	20	
Carbon Junction	60	20	30	45	20	20		
Carbon	60	20	30	45	20			
Fall River Mills	65	20	35	45				
Ingot	30	45	20					
Montgomery Creek	35	35						
Pit No. 1	60							

The above rates are for "Person-to-Person" service; they apply to toll telephone messages over the Bass Telephone Lines without reference to the time of day or the class of toll service which may be requested, or which may be offered or furnished by connecting companies.

(2) *Initial Period and Overtime Period.*

The toll telephone rates herein listed are for an initial period of three minutes and an overtime period of one minute.

(3) *Overtime Rates and Report Charges.*

Overtime rates and report charges are effective as follows:

When the Initial rate is	The overtime rate is	The report charge is
$0 20	$0 05	$0 10
25	05	10
30	10	10
40	10	10
45	15	10
50	15	10
55	15	15
60	20	15
65	20	15

(4) *Toll Rates for Service to and from Points on Lines of Connecting Companies.*

The rates shown in this schedule are in addition to the rates and charges of connecting companies for service furnished jointly over lines of Bass Telephone Lines, and the connecting companies' lines.

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EXHIBIT "C."

TELEGRAPH SERVICE RATES.

Telegraph Service Schedule No. C-1.

Applicable to telegraph service between points as listed below.

(1) *Rate for Telegrams.*

	BETWEEN		
and	Redding	Fall River Mills	Carbon Junction
Bella Vista	$0 30	$0 42	$0 48
Burney	42	30	30
Carbon Junction	48	30	---
Carbon	48	30	30
Fall River Mills	48	---	30
Ingot	36	42	42
Montgomery Creek	36	36	36
Pit No. 1	48	30	30

The above rates are for telegrams of ten words or less. Charges for messages of a greater length than ten words are determined in accordance with the following:

Where the rate for telegram of ten words or less is	The rate for each additional word is
$0 30	$0 025
36	025
42	025
48	035

If the total amount for a telegram exceeding ten words ends in a fraction of a cent, the fraction is counted as a full cent.

(2) *Day Letters and Night Letters—Rate.*

	The day letter rate is		The night letter rate is	
When the rate for ten word telegram is	50 words or less	Each additional ten words or less	50 words or less	Each additional ten words or less
$0 30	$0 45	$0 09	$0 30	$0 06
36	54	108	36	072
42	63	126	42	084
48	72	144	48	096

If the total amount for a day letter or night letter ends in a fraction of a cent, the fraction is counted as a full cent.

(3) *Telegraph Rates for Service to Points on Lines of Connecting Companies.*

The charge applicable to telegraph messages between any point on the lines of connecting companies and a point on the lines of the Bass Telephone Lines is the sum of the connecting company's or companies' rates between the distant point and the connecting point on Bass Telephone Lines and the rates of the Bass Telephone Lines as shown in this schedule.

(Exhibit "D" omitted in printing.)

DECISION No. 19796.

IN THE MATTER OF THE APPLICATION OF MRS. F. C. WILLIAMS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AUTOMOBILE FREIGHT AND EXPRESS SERVICE BETWEEN BAKERSFIELD, SHAFTER, WASCO AND INTERMEDIATE POINTS.

Application No. 14353.

IN THE MATTER OF THE APPLICATION OF A. C. COOLBAUGH TO SELL OPERATIVE RIGHTS BETWEEN BAKERSFIELD, SHAFTER AND WASCO TO CALIFORNIA HIGHWAY EXPRESS.

Application No. 14487.

IN THE MATTER OF THE INVESTIGATION INTO THE SERVICE, PRACTICES AND OPERATION OF A. C. COOLBAUGH, OPERATING AUTO SERVICE BETWEEN BAKERSFIELD, SHAFTER AND WASCO.

Case No. 2513.

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Decided May 23, 1928.

CERTIFICATE—AUTO TRUCK SERVICE.—Mrs. F. C. Williams authorized to operate auto truck service between Bakersfield and Wasco and intermediate points.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION—TRANSFER OF OPERATIVE RIGHTS.—Where the holder of an operative right abandoned operations and another transportation company conducted test operations over such route for several months before entering into a contract of sale and before an application to transfer the certificate was filed, such application was denied and both parties ordered to cease operations.

J. T. Lilley, for Mrs. F. C. Williams, Applicant.
Alfred Siemon; Osborn and Bacum, by *Walter Osborn* and *J. H. Hardy*, for California Highway Express and A. C. Coolbaugh, Applicants.
Cyril C. Haxarth and *Earl C. Cook*, for Kern County Transportation Company, Protestant.
Earl C. Cook and *E. M. Burner*, for Bakersfield-Wasco Stage Line, Interested Party.
Paul Derkum, for Derkum Stage Lines, Protestant.
Edward Stern, for American Railway Express, Protestant.

BY THE COMMISSION.

OPINION.

Public hearings on the above entitled application No. 14353 were held in Bakersfield before Examiner Rowell on February 16, 1928, and March 28, 1928.

The California Highway Express appeared at the earlier hearing to protest the application, claiming to hold an operative right between Bakersfield and Wasco by right of purchase from one A. C. Coolbaugh. Evidence was introduced to show that Coolbaugh had not been operating over his route for several months and the Commission upon its own motion issued an order investigating the operations of Coolbaugh which order was heard on March 28th together with Application No. 14487 of A. C. Coolbaugh and California Highway Express for permission to transfer such operative right from one to the other. By agreement the three matters were consolidated for the receiving of evidence and decision.

The application to transfer will first be considered. This operative right for the transportation of freight between Bakersfield and Wasco was acquired by A. C. Coolbaugh from J. J. Kimbrell on July 3, 1926, set forth in Decision No. 17097. Coolbaugh has not himself operated since about the twelfth day of November, 1927, such operations having been conducted subsequently by the California Highway Express. The latter claims to have been operating under a contract or option to purchase, which purchase was consummated on March 7, 1928, and on which date the two parties made application to this Commission to sanction such transfer. We are convinced, however, that at the time the California Highway Express assumed control of this freight line the assignor, Coolbaugh, had abandoned his operative right and that he at no time since has personally, or by agent, legally performed such operations.

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That violation of duty was not in any way cured by the resumption of service on the part of the California Highway Express. Coolbaugh admitted that his trucks were repossessed by the legal owner and that he was unable to procure others. The California Highway Express, it appears, actually paid $35 to Coolbaugh on or about the twelfth day of November, 1927, but it was not claimed that any sale was made at that time. The California Highway Express explained that it was merely conducting a test operation to determine whether the line could be made profitable and did not so determine until March 7, 1928, the date on which the parties entered into their contract of sale and filed their application to transfer said certificate. During the interim the California Highway Express was under no duty to continue such operations and was uncertain whether it would do so. After ceasing to operate Coolbaugh had no further interest, financial or otherwise, in the business. Coolbaugh is guilty of abandoning his operations, and the California Highway Express also is guilty of operating over such route without having first secured a certificate from this Commission. The application to transfer will be denied, and both Coolbaugh and the California Highway Express ordered to cease operations.

The proposed service of Mrs. Williams between Bakersfield and Wasco by way of Rosedale, Rio Bravo and Shafter is for the transportation of freight of all classes. At the hearing, however, she amended her application to provide for a minimum shipment of forty pounds. Three existing carriers who have express rights in connection with passenger stages protested the application. E. M. Burner, having an express right up to 150 pounds, serves all points on applicant's route; Paul Derkum, with right up to 100 pounds, serves Bakersfield, Rosedale and Rio Bravo, and the Kern County Transportation Company, with express right up to 75 pounds, serves Bakersfield and Wasco. The Bakersfield-Los Angeles Fast Freight Company serves Bakersfield and Wasco, but did not appear at the hearing.

It appears, and we find as a fact, that the territory in which the applicant proposes to operate has now adequate express transportation in connection with passenger stages. We further find that there is a need for a special freight service in addition to the existing express service, the demand coming largely from merchants in Shafter and Wasco who have been using the unauthorized service of the California Highway Express, as mentioned above, and who represent that their needs require some motor freight transportation service. Several merchants testified that they received frequent shipments by truck from Bakersfield of 400 or 500 pounds each and that the existing rail service does not adequately meet their particular needs. The applicant at one time operated a motor freight service over this same route, having disposed of her operative right because of ill health. She owns and

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will operate a two-ton truck. She proposes to operate on the daily schedules and to charge at the rates set forth in the exhibits filed with her application. The minimum charge for any single shipment will be fifty cents.

Mrs. F. C. Williams is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

ORDER.

A public hearing having been held on the above entitled proceedings, the matters being duly submitted and now being ready for decision, and basing its order upon the conclusion and findings contained in the foregoing opinion;

It is hereby ordered, that Application No. 14487 of A. C. Coolbaugh to transfer the certificate to operate as a common carrier between Bakersfield and Wasco, granted by Decision No. 17097 to the California Highway Express, be and the same is hereby denied, and

It is hereby further ordered, that the said operative right granted to A. C. Coolbaugh by Decision No. 17907 be, and the same hereby is revoked, and that said A. C. Coolbaugh and the said California Highway Express discontinue further operations under said certificate, and

It is hereby further ordered, that the rates and time schedules on file with the Railroad Commission in the name of A. C. Coolbaugh be and the same are hereby canceled.

The Railroad Commission of the State of California hereby further finds that public convenience and necessity requires the operation of Mrs. F. C. Williams of a motor transportation service between Bakersfield and Wasco and intermediate points, and

It is hereby further ordered, that a certificate of public convenience and necessity be and the same hereby is granted to the said Mrs. F. C. Williams to operate a motor transportation service as a common carrier of property between Bakersfield and Wasco and intermediate points by way of Roseville, Rio Bravo and Shafter, provided that said certificate shall be subject to the following conditions:

1. Applicant shall file her written acceptance of the certificate herein granted within a period of not to exceed ten days from date hereof.

2. Applicant shall file, in duplicate, within a period of not to exceed twenty days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be those attached to the

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application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by her under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twenty-third day of May, 1928.

DECISION No. 19803.

IN THE MATTER OF THE APPLICATION OF OLD PIONEER MILL WAREHOUSE COMPANY, A CORPORATION, FOR ORDER AUTHORIZING ISSUE OF STOCK.

Application No. 14630.

Decided May 23, 1928.

TRANSFER—SECURITY ISSUES.—Ennis-Brown Company authorized to transfer properties to Old Pioneer Mill Warehouse Company, and the latter authorized to issue $16,000 of its common capital stock.

Rich and Weis, by *Alvin Weis*, for Applicant.

BY THE COMMISSION.

OPINION.

In this proceeding the Commission is asked to make an order authorizing Old Pioneer Mill Warehouse Company to issue and sell, at par, 160 shares of its capital stock of the aggregate par value of $16,000, for the purpose of financing the cost of acquiring from Ennis-Brown Company certain warehouse equipment, and of providing working capital.

It appears that Ennis-Brown Company has been engaged in the bean cleaning and public warehouse business in Sacramento in premises leased from the Southern Pacific Company commonly known as the "Old Pioneer Mill Warehouse." It is reported that on March 17, 1928, it entered into an agreement to sell and transfer, for $14,500, its properties and business to C. H. Straub, H. B. Marshall and A. J. Reid, who, in turn, on April 23, 1928, assigned their interests under the agreement to Old Pioneer Mill Warehouse Company, a corporation, one of the applicants herein, which they had caused to be organized. Copies of

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the agreement and of the assignment are filed herein as Exhibits "B" and "C" respectively.

Old Pioneer Mill Warehouse Company was organized, on or about April 9, 1928, under the laws of the State of California, with an authorized capital stock of $25,000, divided into 250 shares of the par value of $100 each, all common. In making this application to issue and sell $16,000 of its capital stock it asks permission to use $14,500 of the proceeds to pay for the properties to be acquired from Ennis-Brown Company, pursuant to the agreement referred to, and $1,500 to provide working capital.

The properties to be acquired through the expenditure of the $14,500 are described as follows:

> That certain bean cleaning and public warehouse business now being conducted by said Ennis-Brown Company in Sacramento, California, in premises under lease from Southern Pacific Company, a corporation, commonly known as "Old Pioneer Mill Warehouse," together with all the plant and establishment of said business, including fumigating plant; also the miscellaneous machinery and equipment used and for use in connection with said business, more particularly set forth and described in the inventory hereto attached, marked Exhibit "A" and by reference incorporated in and made a part hereof; also including the good will of said business and of said establishment and the exclusive right to the use of the name "Old Pioneer Mill Warehouse"; also including, subject to the approval of said Southern Pacific Company, the leases and leasehold estate of said Ennis-Brown Company in and to the premises wherein said establishment is located and said business conducted, as set forth in three certain leases made by Southern Pacific Company, a corporation, as lessor; and Ennis-Brown Company, as lessee, one of which is dated September 16, 1921, and one of which is dated January 17, 1925, and one of which is dated February 28, 1927; also including all accounts for storage and/or other services incomplete and unsettled on June 1, 1928, together with the necessary records thereof and the right to sue for, demand payment of and collect the same, or any thereof, and enforce any and all liens for the payment thereof.

The equipment is set forth more fully in Exhibit "A" and includes bean cleaners, pickers, polishers, pilers, trucks, scales and other miscellaneous equipment, furniture and fixtures and one Dodge automobile. H. B. Marshall, vice president of Old Pioneer Mill Warehouse Company, testified that in his opinion the physical equipment installed new would cost about $30,000 and that at present it was reasonably worth $14,500.

It is reported that arrangements have been made to lease the building in which operations are conducted from Southern Pacific Company at the same rental now being paid, namely, $503.38 a month. The building is of brick and frame construction, 125 by 580 feet in dimension, located on the Sacramento River and with spur track connections with the Southern Pacific lines. Its capacity is reported at 200,000 bags.

ORDER.

Application having been made to the Railroad Commission, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured or

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paid for through the issue of the stock is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Ennis-Brown Company be and it hereby is authorized to sell and transfer to Old Pioneer Mill Warehouse Company, for $14,500, the properties and business referred to in the foregoing opinion.

It is hereby further ordered, that Old Pioneer Mill Warehouse Company be and it hereby is authorized to issue and sell, at not less than par, $16,000 of its common capital stock, and to use $14,500 of the proceeds to pay for the properties and business of Ennis-Brown Company and $1,500 of the proceeds to provide working capital.

The authority herein granted is subject to the following conditions:

1. Ennis-Brown Company and Old Pioneer Mill Warehouse Company shall file with the Commission, in duplicate, supplements to the tariffs on file with the Commission in the name of Ennis-Brown Company, the former withdrawing and the latter accepting and establishing as its own such tariffs and all effective supplements thereto.

2. Old Pioneer Mill Warehouse Company shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted shall become effective upon the date hereof.

Dated at San Francisco, California, this twenty-third day of May, 1928.

Decision No. 19810.

THE MUNICIPAL LEAGUE, A VOLUNTARY ORGANIZATION OF THE CITIZENS OF THE CITY OF LOS ANGELES, STATE OF CALIFORNIA,

vs.

THE SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; AND SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 970.

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, A VOLUNTARY ORGANIZATION OF THE CITIZENS OF THE CITY OF LOS ANGELES, STATE OF CALIFORNIA,

vs.

THE SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 971.

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THE CIVIC CENTER ASSOCIATION OF LOS ANGELES, A CORPORATION OF THE CITIZENS OF THE CITY OF LOS ANGELES, STATE OF CALIFORNIA.

vs.

THE SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 972.

THE CITY OF PASADENA (A MUNICIPAL CORPORATION)

vs.

PACIFIC ELECTRIC RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY; AND CITY OF LOS ANGELES.

Case No. 974.

THE CITY OF ALHAMBRA (A MUNICIPAL CORPORATION)

vs.

PACIFIC ELECTRIC RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY; AND CITY OF LOS ANGELES.

Case No. 980.

THE CITY OF SAN GABRIEL (A MUNICIPAL CORPORATION)

vs.

PACIFIC ELECTRIC RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY; AND CITY OF LOS ANGELES.

Case No. 981.

THE CITY OF SOUTH PASADENA (A MUNICIPAL CORPORATION)

vs.

PACIFIC ELECTRIC RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY; AND CITY OF LOS ANGELES.

Case No. 983.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY AND LOS ANGELES AND SALT LAKE RAILROAD COMPANY FOR APPROVAL OF AGREEMENT FOR JOINT TERMINAL FACILITIES IN LOS ANGELES, CALIFORNIA.

Application No. 3346.

Decided May 26, 1928.

REHEARING.—Applications of carriers for rehearing in the "Los Angeles Union Terminal Cases" denied.

BY THE COMMISSION.

ORDER DENYING REHEARING.

Petitions for rehearing with respect to matters determined in the above-entitled proceedings by our order dated July 8, 1927, having been filed by The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles and Salt Lake Railroad Company; the Commission having

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considered the said petitions for rehearing, and each and every allegation contained therein, and being of the opinion that no good cause for a rehearing is therein made to appear; now, therefore,

It is hereby ordered, that the said petitions for rehearing be and the same are hereby severally denied.

Dated at San Francisco, California, this twenty-sixth day of May, 1928.

DECISION No. 19811.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA GRANTING IT A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE BY IT OF THE RIGHTS AND PRIVILEGES CONFERRED UPON IT UNDER THE FRANCHISE GRANTED IT BY THE CITY COUNCIL OF THE CITY OF STOCKTON BY ORDINANCE NUMBER 1080 ON THE FOURTEENTH DAY OF FEBRUARY, 1928.

Application No. 14623.

Decided May 26, 1928.

CERTIFICATES—TELEPHONE UTILITY.—Pacific Telephone and Telegraph Company authorized to exercise rights and privileges granted under Ordinance No. 1080 of the City of Stockton.

James G. Marshall, for Applicant.

BY THE COMMISSION.

OPINION.

The Pacific Telephone and Telegraph Company, applicant in this proceeding, requests the Commission for an order granting it a certificate that public convenience and necessity require the exercise by it of certain rights and privileges conferred under the franchise granted it by the city council of the city of Stockton by Ordinance No. 1080 on the fourteenth day of February, 1928.

A hearing in this application was held by Examiner Rowell in San Francisco, on May 17, 1928, at which place and time the matter was submitted.

Applicant is now, and for many years in the past has been, lawfully engaged in the operation of a general telephone and telegraph business in the city of Stockton. The company's witness stated at the hearing that the acquisition of the certificate as requested in the application would not result in any change in the operations or service of applicant in the city of Stockton. The above mentioned franchise is to replace a similar franchise, now expired, under which applicant has been operating in the city of Stockton.

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Mr. J. G. Marshall, attorney for applicant, stipulated that The Pacific Telephone and Telegraph Company would never claim any value for the franchise, a copy of which was marked Exhibit "A" and attached to the application, greater than $698.05, which is the amount paid for such franchise.

No objection was made to the granting of the application and it appears that public convenience and necessity will be served by the granting of applicant's request.

ORDER.

The Pacific Telephone and Telegraph Company having requested this Commission for an order granting it a certificate that public convenience and necessity require the exercise by it of certain rights and privileges conferred under the franchise granted it by the city council of the city of Stockton by Ordinance No. 1080 on the fourteenth day of February, 1928, a copy of said franchise having been filed with the Railroad Commission as Exhibit "B" attached to the application, applicant having stipulated that it never will claim any value for the aforesaid franchise in excess of the sum of $698.05, which is the amount of the cost to it of such franchise, a public hearing having been held, the matter having been submitted and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the exercise of the rights and privileges granted by said franchise; and

It is hereby ordered, that a certificate of public convenience and necessity be and the same is hereby granted to The Pacific Telephone and Telegraph Company authorizing the exercise by it of the rights and privileges granted it by the city council of the city of Stockton by Ordinance No. 1080, dated February 14, 1928.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-sixth day of May, 1928.

DECISION No. 19812.

CALIFORNIA FARM BUREAU FEDERATION

vs.

NORTHERN CALIFORNIA TELEPHONE COMPANY.

Case No. 2511.

CALIFORNIA FARM BUREAU FEDERATION

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 2512.

Decided May 26, 1928.

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SERVICE—TELEPHONE—RULES AND REGULATIONS.—Northern California Telephone Company and Pacific Telephone and Telegraph Company directed to file farmer line service schedule, and modified rule and regulation.

J. J. Deuel and *L. S. Wing*, for California Farm Bureau Federation.
James G. Marshall, for Northern California Telephone Company and The Pacific Telephone and Telegraph Company.
Ernest Irwin, for California Independent Telephone Association.

CARR, *Commissioner.*

OPINION.

California Farm Bureau Federation complains separately against Northern California Telephone Company and The Pacific Telephone and Telegraph Company, alleging that some of their regulations and practices respecting the extension of telephone farmer lines across exchange boundaries are unreasonable. The respective defendants answered the complaints justifying their practices.

A public hearing was had on May 16, 1928, at which the two matters were consolidated.

At the hearing the respective defendants offered to satisfy the complaints by filing certain general rules and regulations by which farmer lines crossing exchange boundaries would be treated as a class of foreign exchange service.

Witnesses for defendants testified at considerable length as to the construction and effect of these proposed rules and, among other things, stated that no rate changes would result in respect to present farmer line services rendered across exchange boundaries as deviations, except as the status of each such service might be changed.

Complainant thereupon stated in open hearing that the satisfaction tendered was acceptable to it. Under the circumstances, all that is necessary to dispose of these matters is an order directing the companies to file formally and put into effect rules and regulations covering the subject matter of the complaint.

I recommend the following form of order:

ORDER.

A public hearing having been had in the two above entitled matters, the same having been consolidated for hearing, and the respective defendants having tendered satisfaction of the complaint and the complainant having accepted such tender of satisfaction as sufficient;

It is hereby ordered, that Northern California Telephone Company file with the Railroad Commission on or before May 29, 1928, a farmer line service schedule substantially as outlined in Exhibit "A" and a modified Rule and Regulation No. 21 substantially as set forth in Exhibit "B" attached hereto, effective June 1, 1928.

It is hereby further ordered, that The Pacific Telephone and Telegraph Company file with the Railroad Commission on or before May 29,

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1928, a farmer line service schedule substantially as outlined in Exhibit "A" and a modified Rule and Regulation No. 21 substantially as set forth in Exhibit "B" attached hereto, effective June 1, 1928.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

For all other purposes the date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-sixth day of May, 1928.

EXHIBIT "A"

FARMER LINE SERVICE SCHEDULE

Service.

Applicable to former line service.

Conditions.

Farmer line service is furnished outside the primary rate area and normally within the exchange area. A farmer line station shall not be located within the primary rate area. A farmer line shall not extend across an exchange area boundary except upon a foreign exchange basis, as hereinafter provided.

The company will provide, own and maintain all lines and facilities used to furnish farmer line service to the boundary of the primary rate area except where the city limits are beyond this boundary, in which case the lines and facilities extend to the boundary of the city limits.

The subscriber will provide, own and maintain all lines and facilities beyond the boundary of the primary rate area or city limits.

Farmer line service will be rendered to less than five subscribers; providing the total minimum exchange revenue of each circuit is not less than that of five residence stations.

The subscriber will be allowed a discount of ten per cent (10%) on the charge for exchange service, if bill is paid at the company's office during the first month of the year. New subscribers will be billed from the date of connection to the end of the year, and annually in advance thereafter. Initial bills rendered new subscribers will be subject to a ten per cent (10%) discount on the charge for exchange service, provided the bill is paid at the company's office within thirty days after date of bill.

Foreign exchange farmer line service will be furnished from one exchange to a farmer line station located in the suburban area of a contiguous exchange under the following rates and conditions:

The rate per station will be one and one-half times the farmer line rate applying in the exchange from which the service is furnished, but not less than $6 per station per year.

The company has the right to cease to render telephone service to a subscriber or subscribers served by means of a privately owned line by disconnection of such privately owned line, if a fault on that privately owned line is causing interruption to service furnished to other subscribers not served by such privately owned line; and may refuse to reconnect such line until the fault shall have been repaired and the line placed in an operating condition.

The above service will be furnished providing the line owned by the subscriber or subscribers is properly constructed and in an operating condition.

Foreign exchange service will be furnished subject to the same conditions as to the use of the service by others than the subscriber and his representatives which are applicable in connection with other classes of subscriber's telephone service. Foreign exchange service will not be provided for public or semipublic use.

The scope of local service for, and the toll rates to and from, stations connected for foreign exchange service will be in accordance with the tariff provisions of the foreign exchange for the particular class of service.

A farmer line may not be connected to more than one exchange. In the event that the farmer line is so connected, and upon failure, after notice to the subscribers of record on that line to comply with the above provision, the company then shall have the right to disconnect that line from any or all the exchanges to which it is connected.

EXHIBIT "B"

RULE AND REGULATION No. 21—OWNERSHIP OF INSTRUMENTALITIES AND DIRECTORIES ON SUBSCRIBER'S PREMISES

(A) *All Service Except Farmer Line Service.*

The company shall own, furnish and maintain all instrumentalities, including inside wiring, protective apparatus and other facilities used to provide service to a subscriber.

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All instruments provided shall conform to the established construction standards of the company.

(B) *Farmer Line Service.*

In the furnishing of farmer line service, the company will provide, own and maintain all lines and facilities used to furnish service to the boundary of the primary rate area except where the city limits are beyond this boundary, in which case the lines and facilities extend to the boundary of the city limits.

The subscriber will provide, own and maintain all lines and facilities beyond the boundary of primary rate area or city limits.

A farmer line station shall not be located within the primary rate area. A farmer line shall not extend across an exchange area boundary except upon a foreign exchange basis.

(C) *Directories.*

Telephone directories containing the listings of subscribers within a specified area, issued from time to time by the company, are and remain the property of the company. They shall not be mutilated and shall be surrendered to the carrier who delivers the subsequent issue.

DECISION No. 19817.

IN THE MATTER OF THE APPLICATION OF MOTOR TRANSIT COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE OPERATION OF A SIGHT-SEEING SERVICE BETWEEN LOS ANGELES AND ORANGE COUNTY.

Application No. 13873 (Supplemental).

IN THE MATTER OF AN INVESTIGATION ON THE COMMISSION'S OWN MOTION INTO THE SERVICE, PRACTICES AND OPERATIONS OF MOTOR TRANSIT COMPANY, A CORPORATION, OPERATING AN AUTOMOTIVE SIGHT-SEEING SERVICE FROM LOS ANGELES TO BEACH POINTS VIA ORANGE COUNTY.

Case No. 2479.

Decided May 28, 1928.

CERTIFICATES—SIGHT-SEEING SERVICE.—**Certificate of Motor Transit Company to operate sight-seeing tours between Los Angeles and Orange County amended to provide that service need not be given unless six persons or more present themselves thirty minutes prior to scheduled leaving time.**

W. H. Sanson and *F. D. Howell*, for Applicant.

Frank Karr, R. E. Wedekind and *H. O. Marler*, for Pacific Electric Railway Company.

Norman H. Robotham, for Pacific Coast Motor Coach Company.

BY THE COMMISSION.

SUPPLEMENTAL OPINION.

By and under Decision No. 18716, dated August 16, 1927, applicant, Motor Transit Company, was granted a certificate of public convenience and necessity authorizing it to operate a sightseeing service from Los Angeles through Orange County and return, having the single terminus of Los Angeles. One of the conditions of that order provided in effect that applicant should file its tariff of rates and time schedules identical with those attached to the application. Pursuant thereto, applicant did file its tariff of rates and time schedules, the latter providing for the rendering of a daily service.

After the granting of the certificate and the commencement of operations by applicant, complaints were made to this Commission that a

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daily service was not being rendered as provided in the time schedules. The Commission instituted an investigation upon its own motion (Case No. 2479) for the purpose of determining whether the service, operation and practices of applicant were in any manner illegal or unlawful.

Subsequently, applicant filed a petition, requesting that Decision No. 18716 be modified so as to permit it to render said service only in the event that one or more passengers presented themselves for transportation.

A public hearing was held on both matters before Examiner Vaughan at Los Angeles on January 30, 1928, at which time applicant orally requested an amendment to the said petition for modification of Decision No. 18716 so as to permit it to render its service only in the event that six or more passengers presented themselves for transportation within more than thirty minutes prior to leaving time, and that if this request be denied applicant be authorized to discontinue and abandon said service. Both matters were thereupon adjourned to February 20, 1928, so as to give opportunity to the various chambers of commerce in Orange County and other interested parties to appear and protest the abandonment if any of them so desired. A written amendment to this petition was later filed.

The adjourned hearing was held before Examiner Vaughan at Los Angeles, both matters were duly submitted, and are now ready for decision.

The record clearly shows that the service has not been successful since its authorization, due probably to the fact that it has not been sufficiently advertised. This has resulted in the operation of the service at a loss to the applicant. If permitted to operate only when six or more passengers present themselves for transportation, applicant will not receive sufficient revenues to even cover operating expenses, but it is anticipated that eventually the service can be built up on a self-sustaining basis.

Dr. F. W. Slabaugh testified at the hearing at the request of the chairman of the board of supervisors of Orange County, and also on behalf of the Orange County Secretarial Association, pleading for the continuation of this tour and to protest against any abandonment. The chambers of commerce of Laguna Beach and Fullerton made appearance in objection to abandonment, and joined the applicant in its request for a modification of the order authorizing the proposed service.

Protestants, Pacific Coast Motor Coach Company and Pacific Electric Railway Company, who, together, operate a common carrier service into Orange County, attempted to show that it would be very unfair to them to grant the request of applicant for the reason that should less than six persons present themselves for transportation on its sight-seeing tour, applicant could then sell these people transportation into

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Orange County on its regular common carrier service, thereby depriving protestants of the possibility of obtaining that patronage. Full opportunity was given to protestants to develop their case on this theory, but we are satisfied that the record does not bear out their contention.

It seems out of the question for us to compel continued rendition of this service for the transportation of only from one to three or four passengers per trip, with the attendant losses. As above noted, even if applicant carries only six passengers as prayed for in the supplemental application, it will not receive sufficient revenues to meet actual out of pocket costs for each trip taken. The past performance of this service as shown by the record is so unsatisfactory that we seriously question the advisability of its continuance. We are somewhat constrained to authorize its abandonment, and would do so except for the requests of various chambers of commerce located in Orange County, and other interested parties. Furthermore, in view of the fact that to allow the rendering of this service as requested by applicant does not seem to us to be unreasonable, we feel that the supplemental application should be granted for a six months trial period for the purpose of ascertaining the probability of its future success. An order will be entered accordingly.

With respect to the investigation upon the Commission's own motion, it appears to us that applicant did not comply with its time schedules, but its failure to do so is due to a misunderstanding. There is nothing to indicate any wilful disregard of the order, in view of which we feel that the investigation should be dismissed.

SUPPLEMENTAL ORDER.

Public hearings having been held in the above entitled matters, the matters having been duly submitted, and the Commission being fully advised;

It is hereby ordered, that the order heretofore issued by the Railroad Commission in its Decision No. 18716 be and the same is hereby modified by the addition to paragraph 2 of the conditions of said order of the following:

> *Provided*, that the applicant herein shall be required to operate the daily service provided for in said tariffs and time schedules only in the event of six or more persons presenting themselves for transportation within more than thirty minutes prior to the scheduled leaving time; and
>
> *Provided further*, that applicant shall render monthly a report of the results of operations for a period of six months from the date of this order, which time is hereby declared to be a reasonable trial period, at the close of which a further supplemental order will be entered either permitting the continuance of service according to such terms and conditions as the Commission shall then deem necessary to impose, or authorizing the abandonment thereof;

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and

It is hereby further ordered, that applicant shall immediately file supplements to its tariffs and time schedules filed in compliance with the order in Decision No. 18716, showing that service will be performed in accordance with the order as modified.

It is further ordered, that Case No. 2479 be and the same is hereby dismissed.

Dated at San Francisco, California, this twenty-eighth day of May, 1928.

DECISION No. 19820.

IN THE MATTER OF THE APPLICATION OF COAST COUNTIES GAS AND ELECTRIC COMPANY, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING SAID COMPANY TO ESTABLISH, FILE AND MAKE EFFECTIVE NEW ELECTRIC RATE SCHEDULES AS HEREIN SET FORTH.

Application No. 14699.

Decided May 28, 1928.

RATES—ELECTRICITY.—Coast Counties Gas and Electric Company authorized to make effective a reduction in electric rates.

Leo H. Susman and *W. R. Van Bokkelen*, for Applicant.

BY THE COMMISSION.

OPINION.

In this proceeding, Coast Counties Gas and Electric Company asks the Railroad Commission to make its order granting applicant permission to file certain new and revised electric rate schedules in lieu of rate schedules now in effect.

A hearing in this matter was held in Watsonville before Examiner Satterwhite on May 24, 1928. No one appeared at the hearing to protest the application.

Applicant proposes to file new electric lighting schedules effective with meter readings taken on and after June 1, 1928, and new general domestic combination electric schedules to become effective with meter readings taken on and after July 1, 1928. Witness for applicant testified that the general effect of filing the new schedules will be a reduction to electric lighting and domestic consumers, approximating seventy thousand dollars per annum. Some slight increases in the bills of a limited number of consumers will result.

The Commission has considered the effect of the schedules which applicant proposes to place in effect and since these schedules will result in an immediate substantial saving to electric lighting and domestic consumers as a whole, we are of the opinion that this application should be granted.

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ORDER.

Coast Counties Gas and Electric Company having applied to the Railroad Commission for authority to make effective certain schedules, a public hearing having been had thereon and the Railroad Commission being of the opinion that such authority should be given; therefore,

It is hereby ordered, that

(1) Effective with bills based on regular meter readings taken on and after June 1, 1928, Coast Counties Gas and Electric Company shall charge and collect for electric lighting service the schedule of rates set forth in Exhibit "A" attached hereto and made a part hereof. Such rates shall be filed with this Commission on or before June 1, 1928.

(2) Effective with bills based on regular monthly meter readings taken on or after July 1, 1928, Coast Counties Gas and Electric Company shall charge and collect for electric combination domestic service the schedules of rates set forth in Exhibit "B" attached hereto and made a part hereof. Such rates shall be filed with this Commission on or before July 1, 1928.

For all other purposes, the effective date of this order shall be twenty days on and after the date hereof.

Dated at San Francisco, California, this twenty-eighth day of May, 1928.

EXHIBIT "A"

SCHEDULE L-1

(Superseding Schedule L-1 now in effect)

General Lighting Service.

Applicable to general domestic and commercial lighting service, including household appliances and small power service.

Territory.

Applicable to service in entire territory served by the company within incorporated limits.

Rate.

Service charge: Per meter per month ..... 50 cents

Energy charge (to be added to service charge):

First	200 kwh. per meter per month	5½	cents per kwh.
Next	800 kwh. per meter per month	4½	cents per kwh.
Next	2000 kwh. per meter per month	3½	cents per kwh.
All over	3000 kwh. per meter per month	3	cents per kwh.

Minimum charge. The service charge set forth above constitutes the minimum charge for no consumption of energy.

Special Conditions.

Single phase motors of an aggregate capacity of 5 hp. or less may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter. The minimum charge applicable to this combination service shall be the same as that set forth above.

SCHEDULE L-2

(Superseding Schedule L-2 now in effect)

General Lighting Service.

Applicable to general domestic and commercial lighting service, including household appliances and small power service.

Territory.

Applicable to service in entire territory served by the company outside of incorporated limits.

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Rate.	*Gross*	*Net*	
Service charge: Per meter per month	75c	70c	
Energy charge (to be added to service charge):			
First 200 kwh. per meter per month	6½c	6c	per kwh.
Next 800 kwh. per meter per month	5c	5c	per kwh.
Next 2000 kwh. per meter per month	4c	4c	per kwh.
All over 3000 kwh. per meter per month	3½c	3½c	per kwh.

The net rate is effective if the bill is paid at the office on or before the fifteenth of the month next succeeding that for which the bill is rendered. If the bill is not paid on or before the fifteenth the gross charge is effective.

Minimum charge: The service charge set forth above constitutes the minimum charge for no consumption of energy.

Special Conditions.

Single phase motors of an aggregate capacity of 5 hp. or less may receive service or may be combined with general lighting service under this schedule at the option of the consumer, provided, in case of combination service, the total energy is supplied through one meter. The minimum charge applicable to this combination service shall be the same as that set forth above.

EXHIBIT "B"

SCHEDULE D-1

(Superseding Schedule C-2 now in effect)

General Domestic Combination Service.

Available, upon application, for domestic lighting in combination with heating, cooking or domestic power service (including lamp socket appliances).

Territory.

Applicable to service in entire territory served by the company within incorporated limits.

Rate.

Service charge: Per meter per month ..... 50 cents

Energy charge (to be added to service charge):

*First 30 kwh. per month	5½c per kwh.
Next 140 kwh. per month	3½c per kwh.
All excess kwh. per month	1½c per kwh.

*For residences, flats, or individual apartments of more than 6 rooms, 5 kwh. for each additional room will be added to the first block of 30 kwh.

Minimum charge:

(a) Where no major equipment is installed, the minimum charge is the service charge.

(b) Where major equipment is installed, the minimum charge will be the service charge plus 40 cents per month for each kw. of major equipment in excess of 2 kw.

(c) Upon application by the consumer, the company will put the minimum charge on an annual basis of $36 per annum for the first 7 kw. of major equipment plus $6 per annum for each additional kilowatt of such major equipment, provided the primary use of service is seasonal and further, provided the consumer signs a contract for service for a period of not less than one (1) year. The company reserves the right to bill the annual minimum charge proportionately throughout the year.

Note: "Major Equipment" includes any device having capacity in excess of 1 kw.

Special Conditions.

(a) This schedules applies only to single family dwellings and to separately metered flats and apartments where the consumer uses cooking or heating or domestic power appliances (including lamp socket devices) of at least 1 kw. aggregate capacity.

(b) Any apartment house or group of apartments may receive service under this schedule through one meter, provided that each individual apartment included has permanently installed heating or cooking equipment of at least 2 kw. capacity.

For this purpose, the first energy block only will be increased and will be made equal to the sum of the first energy blocks separately calculated for the individual apartments included. The rate of 5½ cents per kwh. will be applied to the kilowatt hours thus determined in the same manner as if they were the consumption of an individual service separately metered.

(c) Capacity of all equipment will be based on name plate rating, all equipment assumed as operating at 100 per cent power factor, and a rating in horsepower being converted to kilowatts at one to one.

(d) Single phase power service (5 hp. or less) may be combined under this schedule.

(e) For the purpose of this schedule the number of rooms will be determined upon the customary real estate basis of rating. The tables following are illustrative of rooms to be counted and not to be counted.

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(a) *To be counted*		*Not to be counted*	
Ballroom	Library	Alcove	Hallways
Billiard room	Living room	attic (unfinished)	Laundry
Bedroom	Music room	Bathroom	Pantry
Conservatory	Nursery	(b) Barn (without living quarters)	Piazza
Den	Observatory	Breakfast nook	Porch
Dining room	Office	Butler's pantry	Portico
Drawing room	Parlor	Cellar	Reception room (100 sq. ft. or less)
Dressing room	Reception room	Closet	Sleeping porch
Gymnasium	Servant's room	(b) Coal shed	Storage room
Kitchen	Studio	Dressing closet	Toilet
Kitchenette	Serving room	(b) Garage (without living quarters)	

(a) Rooms listed are to be counted whether they are wired or not.
(b) Each 200 watts connected load of yard, barn or other outhouse lighting will be counted as one room. Empty lamp sockets will be rated at 50 watts each.

SCHEDULE D-2

(Superseding Schedule C-2 now in effect)

General Domestic Combination Service.

Available, upon application, for domestic lighting in combination with heating, cooking or domestic power service (including lamp socket appliances.)

Territory.

Applicable to service in entire territory served by the company outside of incorporated limits.

Rate.

	Gross	*Net*
Service charge: Per meter per month	75¢	70¢
Energy charge (to be added to service charge):		
*First 30 kwh. per month	6½¢	6¢ per kwh.
Next 140 kwh. per month	4¢	3½¢ per kwh.
All excess kwh. per month	1½¢	1½¢ per kwh.

* For residences, flats, or individual apartments of more than 6 rooms, 5 kwh. for each additional room will be added to the first block of 30 kwh.

The net rate is effective if the bill is paid at the office on or before the fifteenth of the month next succeeding that for which the bill is rendered. If the bill is not paid on or before the fifteenth the gross charge is effective.

Minimum charge:

(a) Where no major equipment is installed, the minimum charge is the service charge.

(b) Where major equipment is installed, the minimum charge will be the service charge plus 40 cents per month for each kw. of major equipment in excess of 2 kw.

(c) Upon application by the consumer, the company will put the minimum charge on an annual basis of $36 per annum for the first 7 kw. of major equipment plus $6 per annum for each additional kilowatt of such major equipment, provided the primary use of service is seasonal and further, provided the consumer signs a contract for service for a period of not less than one year. The company reserves the right to bill the annual minimum charge proportionately throughout the year.

Note: "Major Equipment" includes any device having capacity in excess of 1 kw.

Special Conditions.

(a) This schedule applies only to single family dwellings and to separately metered flats and apartments where the consumer uses cooking or heating or domestic power appliances (including lamp socket devices) of at least 1 kw. aggregate capacity.

(b) Any apartment house or group of apartments may receive service under this schedule through one meter, provided that each individual apartment included has permanently installed heating or cooking equipment of at least 2 kw. capacity.

For this purpose, the first energy block only will be increased and will be made equal to the sum of the first energy blocks separately calculated for the individual apartments included. The rate of 6½ cents gross, 6 cents net, per kwh. will be applied to the kilowatt hours thus determined in the same manner as if they were the consumption of an individual service separately metered.

(c) Capacity of all equipment will be based on name plate rating, all equipment assumed as operating at 100 per cent power factor, and a rating in horsepower being converted to kilowatts at one to one.

(d) Single phase power service (5 hp. or less) may be combined under this schedule.

(e) For the purpose of this schedule the number of rooms will be determined upon the customary real estate basis of rating. The tables following are illustrative of rooms to be counted and not to be counted.

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(a) *To be counted*		*Not to be counted*	
Ballroom	Library	Alcove	Hallways
Billiard room	Living room	Attic (unfinished)	Laundry
Bedroom	Music room	Bathroom	Pantry
Conservatory	Nursery	(b) Barn (without living quarters)	Piazza
Den	Observatory	Breakfast nook	Porch
Dining room	Office	Butler's pantry	Portico
Drawing room	Parlor	Cellar	Reception room (100 sq. ft. or less)
Dressing room	Reception room	Closet	Sleeping porch
Gymnasium	Servant's room	(b) Coal shed	Storage room
Kitchen	Studio	Dressing closet	Toilet
Kitchenette	Serving room	(b) Garage (without living quarters)	

(a) Rooms listed are to be counted whether they are wired or not.
(b) Each 200 watts connected load of yard, barn or other outhouse lighting will be counted as one room.
Empty lamp sockets will be rated at 50 watts each.

Decision No. 19822.

IN THE MATTER OF THE APPLICATION OF KEY SYSTEM TRANSIT COMPANY, A CORPORATION, FOR AN ORDER READJUSTING ITS RATES AND ESTABLISHING JUST AND REASONABLE RATES FOR THE TRANSPORTATION OF PERSONS AND PROPERTY BETWEEN POINTS ON THE COMPANY'S LINES IN THE STATE OF CALIFORNIA.

Application No. 11329 (Rehearing).

IN THE MATTER OF THE INVESTIGATION UPON THE COMMISSION'S OWN MOTION INTO THE RATES, FARES, CHARGES, CLASSIFICATIONS, PRACTICES, RULES, REGULATIONS AND SERVICE OF THE KEY SYSTEM TRANSIT COMPANY, A PUBLIC UTILITY CORPORATION.

Case No. 2467.

Decided May 29, 1928.

RATES—FERRY—INCREASE.—Key System Transit Company authorized to establish monthly commutation fare of $7 between San Francisco and Richmond, Point Richmond, Pullman and San Pablo, and $6.50 between San Francisco and other East Bay communities. Commissioner Decoto dissents from portion of opinion leaving street car fares open for further consideration.

RATES—STREET RAILROAD—EXPERIMENTAL FARES.—The Commission refused to order in effect any of various suggested forms of street railroad fares where any such action would be in the nature of questionable experimenting with a situation extremely hazardous both to the carrier and to the public.

RATES—PARTICULAR UTILITIES—FERRIES.—*Per Carr.* Transbay ferry riders should not be required to carry the entire burden of an unprofitable traction system.

RATES—REASONABLENESS—IN GENERAL.—*Per Carr.* While the need of increased revenue may have been established, such revenue should be sought from casual or occasional riders rather than regular riders.

RATES—PARTICULAR UTILITIES—FERRIES—*Per Carr.* It is not fair to require transbay riders to keep a traction division of a carrier going if there is any way by which its own patrons can do this.

Dunne, Brobeck, Phleger and Harrison, for the Key System Transit Company.
Guy V. Shoup and *C. W. Durbrow*, for the Southern Pacific Company.
W. J. Locke, City Attorney, for the City of Alameda.
Preston Higgins and *J. W. Collier*, for the City of Oakland.
E. J. Sinclair, City Attorney, and *John N. Edy*, City Manager, for the City of Berkeley.

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Thos. M. Carlson, City Attorney, for the City of Richmond.
C. W. White, for the Town of Hayward.
G. N. Richardson, for the City of Piedmont.
Thomas W. Girby, for the Town of Emeryville.

SEAVEY, *Commissioner*.

OPINION.

The above application was filed by the Key System Transit Company on June 27, 1925. Because of the needs of the company on December 31, 1925, increased interim fares were granted by Decision No. 15817. Following that interim order a further study was made of the situation resulting in certain findings of facts and recommendations and an order directing the establishment of certain purely experimental fares, Decision No. 19027, dated November 9, 1927.

The company did not elect to try these experimental fares and petitioned for rehearing, which was granted on December 22, 1927. On the same date the Commission instituted an investigation on its own motion, Case No. 2467, broadening the issues to be considered. Further hearings were held on January 24 and 25, March 6, 7, 8, 27, 28 and 31, 1928, on which last date the matters were submitted.

Outside of those features which will be hereafter discussed, there seems no reason to alter the findings of facts set forth in Decision No. 19027, to which decision attention is hereby directed.

The experimental form of fares set out in Decision No. 19027 will no longer be considered. It is obvious, as indicated by the Commission in that decision, that there was little hope for success with such fares unless the company tried them out wholeheartedly. The municipalities, the business interests and the people generally in the east bay district evidenced a desire and willingness to aid the company in every way in this experiment, but the company did not wish to take the step, believing that it was too much of a risk in light of its financial condition.

In Decision No. 19027 this Commission estimated that the current financial results of the applicant's operations on an annual basis indicated a net income available for return of $1,195,079. On a comparable basis, using 1927 actual revenue and taxes, this figure of net income for 1927 is $1,014,425. The decrease in revenue according to the record is continuing for 1928, and therefore the net income for 1928 on the present fares undoubtedly will be reduced to a substantially lower figure. The fixed charges for 1927 totaled $1,078,250.63 and for 1928 will be approximately the same. It is therefore apparent that with the present basis of fares this applicant will not be in a position to meet its fixed charges for 1928.

The company in order to continue to give service to the public is entitled to and must have increased net income and to have that increase permanently. This must be accomplished by both increasing revenue

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and decreasing expense. This Commission has previously pointed out how expenses may be decreased. Only the possibility of further increase of revenue will be discussed in this opinion.

TRANSBAY LINES

The company asks as base fares 25 cents one way and $6.50 commutation. The one-way fare is now 21 cents. The service here performed, compared with the service performed under the local present fare of 7 cents and the maximum proposed fare of 10 cents, indicates that the fare of 21 cents should not be increased. Checking the relationship between the one-way fare and the commutation against the average cost of service on the transbay lines further confirms this conclusion. The estimated total average cost per transbay passenger trip, as derived from the figures in this record, is approximately 17.3 cents, of which 13.1 cents reflects the cost of operation and 4.2 cents reflects return on the facilities used. Under the present commutation fare of $5.20 per month the trip rate each way is 8¾ cents on a thirty-day basis and 11.2 cents on the average usage basis. In my opinion, under the circumstances and conditions in this territory, the commutation rate should be sufficient to cover the average unit operating cost of the present transbay service, together with some margin for return upon the facilities used. The $6.50 commutation rate proposed by the company is equivalent to 14.1 cents per trip on the average usage basis. This rate meets the above condition.

I therefore recommend that the regular one-way fare remain as it is at 21 cents and that the commutation fare between San Francisco and Richmond be increased to $7, and the fare between San Francisco and all other east bay communities now served at $5.20 be increased to $6.50.

I further recommend that the company, in order to increase its traffic and its revenue, seriously consider putting in special round trip fares on off peak periods, such as Sundays, holidays and evenings.

STREET CAR LINES

The condition of the street car industry throughout the nation is very unsatisfactory. In the east bay district this is true in an aggravated form. It has the general condition of destructive competition with the private automobile in a territory where the automobile can be used to advantage throughout the year. The region is a difficult one to serve, being a narrow strip thirty miles long, with a large proportion of unprofitable territory. The history of the financial structure of the company has been one of considerable misfortune. Also, its public relations generally have been unsatisfactory.

In this record there are several fare structures under consideration for the street car lines which either the engineers of the company or the engineers of the Commission estimate will bring additional revenue.

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They will be designated and discussed from the standpoint of their basic fares.

1. *5-cent zone fares:* The Commission's engineer estimated that this plan would increase the gross annual revenue of the company in the amount of $440,000. No estimate was presented by the company. The estimate was based generally upon the zoning outlined in Decision No. 19027 where the present sixteen mile zone of Oakland and Berkeley was divided into three zones. If a zone system of fares was put into effect some such division would be necessary, but no basic study has been made to determine the most equitable fare breaking lines. If such fares were to be attempted at this time they would be experimental and the zones would probably need soon to be revised. Under the straight zone fares the revenue would be increased immediately with a probable downward trend, finally seeking a level considerably above where the present 7-cent fare is settling. I am inclined to believe that in this territory a basic zone system of 5-cent fares, with some concession to the regular long distance riders, will become necessary in the quest for equitable fares and a more adequate return and that this should be attempted before driving riders away with higher base fares. It would be wise for the company at least to collect data that may be used in making a determination along this line.

2. *5-cent zone fare with $1.00 weekly pass:* The Commission engineer estimated on this modification of the straight 5-cent zone fare an increase in gross annual revenue ranging from a maximum of $834,000 to a minimum of $134,200. The company engineer estimated a loss of approximately $400,000 for the year 1928. These figures of maximum gain and loss are undoubtedly far beyond the mark. I am convinced that not only would this form of fare bring in as much if not more revenue but it would have a tendency to a future increase rather than a decrease, as is being experienced under the present 7-cent fare.

3. *10-cent fare with $1.00 weekly pass:* This is the fare proposed by the applicant. The company's engineer estimated a net increase in annual revenue of $424,300 for the year 1928. The Commission's engineer estimated a reduction in gross annual revenue, after a period of adjustment of from two to three years, to the extent of $375,000. Under cross-examination, however, certain errors in calculation were pointed out whereby an estimate prepared on the premises used showed the reduction in gross revenue increased to $755,000. The Commission's engineer testified to another estimate of what this form of fare would produce based upon different premises which resulted in a decrease in revenue of $365,000. The wide variation in the amounts which these different estimates show would be earned under this form of fare suggests a very serious uncertainty as to the actual effect of establishing this fare.

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The company's estimate it would seem is all that could be expected under the most ideal conditions. Such conditions do not obtain in this region, as has been indicated to some extent heretofore and as will be referred to later in this opinion. The 10-cent fare is generally recognized as the maximum amount that can be charged for a single territorial street car ride, it being generally admitted that any higher fare would permanently drive away both the long and short distance rider to other means of transportation. In fact, as the result of the present downward trend of traffic under the existing 7-cent fare, the company's engineer modified his estimate, showing that the net increase in gross revenue for the year 1928 would probably be only $171,300. With the continuation of this downward trend, the revenue of the company in the third year would be found to closely approximate the estimate of the Commission's engineer.

4. *10-cent fare, 3 tokens for 25 cents, $1.00 weekly pass:* This form of fare is a concession to 10-cent riders under basis No. 3 who ride rather frequently and will also take away some of the pass riders who are in the twilight zone. The Commission engineer estimates an annual gross loss of $88,000. The company engineer estimates a net gain to revenue of about $165,000. This proposal is subject otherwise to some of the same strictures as basis No. 3 and altogether does not give much hope.

5. *10-cent fare, 3 tokens for 25 cents, $1.25 weekly pass:* The company offered this form of fare for consideration with the statement that it was not acceptable and its engineer estimated that the net increase in revenue would be $583,300 for 1928. The Commission engineer made no estimate. This again is a form of concession to the 10-cent riders. It will throw more percentage into the token class and will have a much greater tendency to decrease the total number of riders. Temporarily it will give some added revenue but permanently, under normal conditions, it will reduce the total riders much below No. 3 and No. 4 and produce a total revenue somewhat higher. It also is subject to some of the same strictures as No. 3.

During the hearings on rehearing the company called as witnesses the general managers of the street car lines in Salt Lake City, Seattle and Tacoma, and the managing director of the American Electric Railway Association. These were all men of considerable experience with street railways in operation and rate matters and in general study. Three of these witnesses are in active street car management and have for a large portion of the last ten years been experimenting with different forms of fares and, as I read their testimony, are still experimenting. They testified specifically and strongly against the experimental fares proposed in the last order of this Commission and generally in favor of the fares proposed by the company. Their experience has been con-

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fined principally to service in territory that may be termed one unit of population and one municipal control. I question if their experience can be used to solve the east bay problem except in a very general way.

We have here a utility operating a unified street car system in ten separate municipalities. At least five of these cities have developed individually and largely within themselves until the phenomenal growth of this section has brought their outskirts together. They still retain their individuality, even though one of them is now metropolitan in size. Some of them still retain their constitutional control over certain features of this utility's operations. All of them have legal control over automotive transportation within their bounds. Testimony in this record indicates action in different parts of this territory adverse to the interests of applicant in the event that increased revenue is sought to be obtained through ill-advised fare structures.

Urban transportation is in a serious period of transition. It is nothing strange or unexpected. The new form is making inroad into or transplanting the old, as has happened in the past. In many instances the change has entirely taken place, either by a total abandonment or by transplanting. This record is replete with testimony direct and indirect to the effect that this company is now in serious financial difficulties and that the future does not hold out hope for any continued adequate return upon the investment in street car property from revenue from that operation.

I am frank to say this record seems to indicate that the wolf has been kept from the door longer in those cities where there has been the direct assumption of municipal responsibility for operation or full and open public cooperative arrangements between local authorities and utilities, concessions made on both sides and experimental rates tried with joint approval.

Under this record and the condition stated I can not recommend to the Commission that it order into effect for the street car service any of the forms of fares hereinabove considered. Any such action would be in the nature of questionable experimenting with a situation extremely hazardous both to the applicant and to the public. The company itself should, if possible with the aid of local authorities, prepare the way for some form of fare experimentation and other means of lessening the stress on this system that appears to have more reasonable chance of success.

I therefore recommend that the matter as to street car fares be left open for further order to such time as, after due consideration, the company, by resolution of its board of directors, may petition this Commission to file fares which it believes will most nearly meet the exigencies of the situation.

The following form of order is recommended:

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ORDER.

The application of the Key System Transit Company for an adjustment of its fares being before this Commission on rehearing, the previous order, Decision No. 19027, having been suspended, public hearings having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision;

It is hereby ordered, that applicant be and it is hereby authorized to establish within thirty days from the date of this order upon not less than three days' notice to the Commission and to the general public by filing and posting tariffs in the manner prescribed in section 14 of the Public Utilities Act, and thereafter maintain and apply a monthly commutation fare of $6.50 between San Francisco and Berkeley, Northbrae, Albany, Claremont, Piedmont, Underhills, Trestle Glen, Oakland and points intermediate thereto as shown in item 163 of Key System Transit Company Tariff C. R. C. No. 18, and a monthly commutation fare of $7 between San Francisco and Pullman, Richmond, Point Richmond and San Pablo, subject to the following conditions:

1. The applicant shall file with the Commission monthly reports of such operating and traffic statistics as the Commission may prescribe from time to time, on forms approved by the Commission. Further, upon request, applicant shall furnish copies of said operating and traffic statistics to the duly accredited representative of each community in which the applicant's lines are operated.

2. The Commission reserves the right to abolish or to modify or change from time to time, by supplemental order herein, the rates and fares herein prescribed and to make such further orders in this proceeding as may be deemed right and proper.

It is hereby further ordered, that these proceedings remain open in accordance with the recommendations in the opinion in so far as they apply to the street car fares on this system.

For all purposes the effective date of this order shall be twenty days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-ninth day of May, 1928.

LEON O. WHITSELL,
C. L. SEAVEY,
THOS. S. LOUTTIT,
Commissioners.

OPINION CONCURRING IN PART AND DISSENTING IN PART

I am in general agreement with my associates that some substantial relief must be given the company but I am not in entire accord with

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them as to nature of the relief or the kind of order which should be made.

The condition of this company is probably even worse than indicated in the majority opinion. The operative property represents a cost of approximately $29,000,000. To reproduce it new it would cost more than this. The fair value of the property under all the circumstances is probably much less. The company has a bonded indebtedness of $17,445,000, amounting to about 60 per cent of the cost of its property. Its annual interest charges on this are, in round figures, $1,078,000. In 1927 with depreciation calculated on the sinking fund basis its actual operative earnings were only $834,000, or $244,000 less than enough to meet its fixed interest charges.[1] The rate of return on the cost of the property is less than 3 per cent.

Questions usually important in rate proceedings are here unimportant, for here the question insistently forces itself to the front—"can any system of fares having some semblance of fairness between classes of riders be devised which will make it possible for this company to exist and to continue to serve the great populations tributary to its lines?"

On December 31, 1925, the Commission as an emergency measure authorized the company to establish a 7-cent street car fare, a 21-cent single trip transbay fare and a $5.20 monthly commutation transbay fare, estimating that these emergency increases in fares would yield the company an increased annual revenue of $846,000. (*Re Key System Transit Co.*, 27, C. R. C. 381.) Notwithstanding this confident prediction the increased fares in 1926 yielded an increase in gross revenue of but $280,000 and in 1927 of but $135,000.

This company is in competition with privately owned automobiles both in its traction and its transbay service. It is subject to a potential bus competition in its traction service in each of the various cities it serves because each of these may authorize such a bus service. It is likewise, although in perhaps a lesser degree, subject to such a potential competition in respect to its transbay service. The various communities the company serves and other communities about San Francisco Bay are in a state of competition in respect to their development and upbuilding. Transportation facilities and charges have their effect upon the rate of development of these and the attraction and movement of population.

While, as strikingly illustrated by the actual experience of this company, authorizing this fare or that may find ample justification on paper and in theory, any such fare is futile if the public will not ride. In

[1] The engineers of the Commission estimated reasonable operating expenses for 1927 at a somewhat less figure than the actual experience of the company showed they were. The majority opinion uses the former, which explains the difference between the results there and here indicated. For the purposes of this decision it is not important which figures are used.

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short with this, as with many similar companies, competitive and economic conditions have become far more potent than the order of any regulatory body such as this. To a very large extent the riding public fixes and determines the rate of fare.

In considering what should be done under the situation pointed out, it should be borne in mind that the company's property and operations are divided into two divisions—the Key or transbay division and the traction division which serves the various local communities. Of these the traction division is in very much the worse condition. It is enough here to point out that the Key division is earning about 5 per cent return and the traction about 2 per cent.

I am in agreement with my associates that increased transbay fares should be authorized. Also I am in agreement with them that there is a limit upon the fares which may reasonably be imposed upon this class of riders. They should not be required to carry the entire burden of the unprofitable traction system. It is not easy to lay down any general rule as to how much of the burden they should carry. As far as the record is concerned there is no dispute that the transbay fare increases asked by the company will augment its revenue by between $400,000 and $450,000 a year nor that a little over one-half of this would come from the increase of the one-way fares from 21 cents to 25 cents. My associates favor authorizing the increased commutation fares, leaving the one-way fare as it is. The reverse of this seems to me the proper course. Historically the relationship between the commutation fares and one-way fares has been kept almost constant. If any change is to be made now it seems to me more logical to apply to these fares the theory which the company would apply to its traction division, namely, to leave the charge as against regular riders substantially unchanged and to seek increased revenue from the casual or occasional riders. There is nothing unfair or unreasonable in this general theory and I think it should here be applied to the transbay riders.[2]

What to do with the traction division and fares presents a far more difficult question. It is not fair to require the transbay riders to keep this division going if there is any way by which its own patrons can do this. The present fare structure is an unreasonable one in the sense that the fare does not yield any substantial return on the property. The company insists that its proposed 10-cent fare with a $1 weekly pass will increase its revenue by some $400,000 over its revenue from

[2] Here the Commission is in effect rendering a judgment against one class of riders, namely, the commutation riders. The issue as to which of these two classes should be required to bear an increased burden really has not been tried out in the course of the proceedings, the record being surprisingly barren of testimony or discussion to aid in reaching a correct conclusion. This situation illustrates concretely what I sense is a serious defect in regulation of rates by the Commission. A rate case is fully presented and the Commission reaches a sound and well supported conclusion that revenue should be decreased or increased as the case may be. The question then arises as to the class or persons to secure the benefit or suffer the detriment. As to this, while the patrons of the utility theoretically have a hearing practically they do not.

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the present 7-cent fare. None of the various other forms of fares suggested either in the former opinion or in the course of the hearings since hold any reasonable certainty of yielding additional revenue, and much as this Commission might prefer to direct some fare other than that proposed by the company it is not justified in so doing under the present record.[3]

I am in entire accord with my associates in the premise that competitive and economic conditions will largely determine the level and kind of fares. But I feel that the logical conclusion from this premise is that where a company admittedly is not earning a reasonable return on existing fares it should be given some latitude in establishing new fares which it believes will, under such competitive conditions, yield it something in the way of a return. This of course is subject to the qualification that the general scheme of fares is not an unreasonable one. It can not be said that the company's proposal is unreasonable. In its essence it does not substantially affect regular riders who may make use of the $1 weekly pass. There is nothing unfair or unreasonable in the casual or occasional rider paying more than the regular rider.

Whether this fare structure will work is a different question. The company claims it will. I think this Commission must give the company a chance to try it out. Its success or failure will depend largely upon the way in which it is received by the traveling public, which, after all, here holds the final veto power.

W. J. CARR,
Commissioner.

I concur in the foregoing opinion, with one exception:

From the study of the record in this case, it seems clear to me that there is no street car fare proposed or that can be devised at this time that will yield a greater gross revenue than the fare now in force. In my opinion the applicant would now be in better position from the point of view of gross earnings if it had left in force the six-cent fare. The increase in fare of one cent caused four million less rides in the first seven months. These four million rides did not vanish into thin air. They represent the people who took to the automobile or to walking. This company can not compete with the privately owned automobile, or with buses, or with the tendency of the people to leave street cars by raising the cost of street car travel.

In addition to the increased use of the automobile, to which the territory served by the applicant readily lends itself, there has grown up in all the applicant's territory, at intervals of approximately ten blocks,

[3] I agree with Mr. Commissioner Seavey that any fare structure of a trial nature to which the company is opposed would be almost certain to fail. It would never receive a fair trial. In a prior order this Commission authorized fares of an experimental nature, going upon the theory that the company by its fares should seek to attract more patronage. The company was bitterly opposed to trying such a fare structure. In view of the uncertainty of the results of such a structure the Commission would not be justified in making a mandatory order requiring it to be tried out.

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small business communities. These small business communities vary in size from a few stores to several blocks of stores and each one has its own moving picture house, many of which seat over a thousand people. In these small business communities every kind of merchandise is carried. This new business development has now reached the stage where there are very few sections of the territory served by the applicant that are not within easy walking distance of one of these business centers. This has created a tendency to buy in the immediate vicinity of a residence and thus eliminate the cost of street car fare. A raise of street car fare would certainly tend to accentuate this tendency.

This Commission has pointed out many times that the solution of this applicant's difficulties lies in rigid economy, in the reduction of its operating expenses, and in the abandonment of duplication of service by this applicant and the Southern Pacific Company. The territory served by applicant could readily be served by complete one-man car operation. This complete operation, in my judgment, would save to the applicant $350,000 per year. It is to reductions of this kind and to abandonment of duplication of service by the applicant and the Southern Pacific Company that this applicant must look for increased net earnings rather than to increased fares, which experience has shown only tends to drive business from the applicant.

In this particular instance the regulation of street car fares seems to have passed from the realm of regulation by this Commission into the realm of regulation by competition, that competition now being furnished by the privately owned automobiles and will be furnished by buses as soon as street car fares approach ten cents.

For the next several years, or until the community served becomes most densely populated, the applicant can not hope to obtain from any combination of street car fares the rate of return usually allowed to public utilities. It must, in the mean time, be satisfied with a much smaller return.

I do not concur in that portion of the opinion that leaves the street care fares open for further consideration. This case has been before the Commission for two years and a constant study of various fares has been made in this district as well as in other cities of the state. I believe little additional can be learned from further study by either our own engineers or those of the applicant. For this reason the fares should now be definitely fixed at seven cents and the case closed.

EZRA W. DECOTO,
Commissioner.

DECISION NO. 19823.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY, FOR AUTHORITY TO INCREASE ONE-WAY AND INDIVIDUAL MONTHLY COMMUTATION FARES, BETWEEN SAN FRANCISCO AND POINTS IN THE COUNTY OF ALAMEDA, CALIFORNIA.

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Application No. 11504.
Decided May 29, 1928.

RATES—FERRY—INCREASE.—Southern Pacific Company authorized to increase transbay individual monthly commutation fares.

G. V. Shoup and *C. W. Durbrow*, for the Southern Pacific Company.
Dunne, Brobeck, Phleger and Harrison, for the Key System Transit Company.
Preston Higgins, City Attorney, by *A. N. Nelson*, Assistant City Attorney, for the City of Oakland.
W. J. Locke, City Attorney, for the City of Alameda.
E. J. Sinclair, City Attorney, and *John N. Edy*, City Manager, for the City of Berkeley.
D. J. Hall, City Attorney, for the City of Richmond.
G. N. Richardson, for the City of Piedmont.
C. W. White, for the Town of Hayward.
Thomas W. Girby, for the Town of Emeryville.

SEAVEY, *Commissioner*.

OPINION.

On July 27, 1925, Southern Pacific Company filed the above entitled application with this Commission, asking for an investigation and order authorizing reasonable fares. Upon supplemental petition herein for interim rates, the Commission on January 19, 1926, by Decision No. 15875, authorized certain temporary rates.

The Commission, subsequent to the issuance of that order, has directed its staff, in cooperation with the interested parties, to make an extensive and thorough investigation of the facts pertinent to the issues in this proceeding.

Results of these investigations together with the testimony of other interested parties, particularly the applicant, have been placed in evidence at the numerous public hearings held in this matter. A restatement and summarization of all of the evidence presented appears unnecessary and will be omitted from this opinion.

The following findings of fact clearly appear to be justified, after a complete and careful consideration of all evidence presented:

(1) The financial results of operation of the applicant's property for the year 1927 as estimated by the Commission's engineers may be fairly stated as follows:

Operating revenues	$3,423,000 00
Operating expenses, depreciation computed on a 5 per cent sinking fund annuity method, and taxes	3,868,267 00
Net income—deficit	$445,267 00

(2) It appears improbable that there can be found a schedule of rates and fares which, if established, would produce sufficient revenues to pay operating expenses together with a fair return based on any value of the property that might be found.

(3) The direct competitive conditions that exist between the transbay interurban system of applicant and that of the Key System Transit Company necessitate the fixing of the applicant's rates and fares at a level not higher than those of the Key System Transit Company.

It is my conclusion that such rates should be established as will put the applicant's rates on a parity with the rates authorized on the Key

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System Transit Company's transbay lines and, from the evidence at present before me, I am of the opinion that the increase will not result in a return to the company sufficient to even pay the out of pocket operating expenses.

The following form of order is recommended:

ORDER.

The Southern Pacific Company having filed the above entitled application for an adjustment of its fares, public hearings having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision;

It is hereby ordered, that applicant be and it is hereby authorized to establish within thirty days from the date of this order, upon not less than three days notice to this Commission and to the general public, by filing and posting tariffs in the manner prescribed in section 14 of the Public Utilities Act, and to thereafter maintain and apply monthly commutation fares as prescribed in Exhibit "A" attached hereto and made a part hereof, subject, however, to the following conditions:

(1) The applicant shall file with this Commission monthly reports of such operating and traffic statistics as the Commission may prescribe from time to time on forms approved by the Commission. Further, upon request, the applicant shall furnish copies of said operating and traffic statistics to the duly accredited representative of each community in which the applicant's lines are operated.

(2) The Commission reserves the right to abolish or to modify or change from time to time, by supplemental order herein, the rates and fares prescribed in said Exhibit "A" and to make such further orders in this proceeding as may be deemed right and proper.

It is hereby further ordered, that these proceedings remain open for such further orders as the Commission shall find necessary in the public interest.

For all purposes the effective date of this order shall be twenty days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-ninth day of May, 1928.

LEON O. WHITSELL,
C. L. SEAVEY,
THOS. S. LOUTTIT,
Commissioners.

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OPINION CONCURRING IN PART AND DISSENTING IN PART

My views on the question of transbay fares are indicated in the opinion I filed in the Key System proceeding this day decided. The views expressed there if applied here would call for an increase in transbay fares, but the increase would be applied to the one-way fares rather than to the commutation fares.

W. J. CARR,
Commissioner.

EXHIBIT "A"

1. INDIVIDUAL MONTHLY COMMUTATION FARES BETWEEN SAN FRANCISCO AND STATIONS ON EAST BAY ELECTRIC LINES; ALSO STATIONS ON MAIN LINE TO AND INCLUDING STONEHURST AND VIGORIT.

Between San Francisco and—	
Oakland Pier Alameda Pier Oakland (7th and 18th St. Lines) Alameda (via Oakland or Alameda Pier) Berkeley Thousand Oaks University Campus Berkeley (University Avenue) Sather Seminary Avenue Parker Avenue	$6.50
Sequoyah Avenue	6.65
Dutton Avenue	7.00
Stonehurst	7.00
Vigorit	6.50

The fares authorized above will be subject to the same rules, regulations, allowances and privileges in effect under the present fares shown in Southern Pacific Company's Local Commutation Tariff D No. 2, C. R. C., No. 4177.

DECISION No. 19824.

IN THE MATTER OF THE APPLICATION OF WHITTIER WATER COMPANY, A CORPORATION, EDWIN G. HART, INC., A CORPORATION, LA HABRA HEIGHTS COMPANY, A CORPORATION, LA HABRA HEIGHTS MUTUAL WATER COMPANY, A CORPORATION, LA MIRADA MUTUAL WATER COMPANY, A CORPORATION, ORCHARD DALE SERVICE COMPANY, A CORPORATION, HILLSIDE DISTRIBUTION CO., A CORPORATION, FOR ORDERS (A) TO SELL AND CONVEY PROPERTY; (B) TO DISCHARGE VENDOR FROM PUBLIC UTILITY OBLIGATIONS; (C) TO SUBSTITUTE PURCHASER IN PUBLIC UTILITY SERVICE; (D) THAT PUBLIC CONVENIENCE REQUIRES NEW CONSTRUCTION AND SERVICE.

Application No. 14456.

IN THE MATTER OF THE APPLICATION OF ORCHARD DALE SERVICE COMPANY, A CORPORATION, FOR (A) ORDER AUTHORIZING THE ISSUE OF CAPITAL STOCK; (B) ORDER AUTHORIZING EXECUTION OF MORTGAGE; AND (C) CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Application No. 14680.

Decided May 29, 1928.

TRANSFER—SECURITY ISSUES.—Whittier Water Company authorized to transfer its Judson Water System to La Mirada Mutual Water Company, and the latter

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authorized to transfer part of said system to the Orchard Dale Service Company. Orchard Dale Service Company authorized to issue its note for $50,000, and its capital stock in the sum of $60,000 to La Mirada Mutual Water Company.

Finlayson, Bennett and Morrow, by *James S. Bennett*, for Whittier Water Company.
Farrand and Slosson, by *Leonard B. Slosson*, for Purchasers.
R. T. Waters, for Orchard Dale Water Company and other users.

BY THE COMMISSION.

OPINION.

In Application No. 14456 the Railroad Commission is asked to make an order authorizing Whittier Water Company to sell part of its water properties, known as the Judson Water System, to the La Mirada Mutual Water Company, and that company, in turn, to sell a part of such system to Orchard Dale Service Company. The Whittier Water Company also asks to be relieved of certain public utility obligations.

In Application No. 14680, Orchard Dale Service Company asks the Railroad Commission for permission to sell and deliver water to the public within the territory now being served by the properties to be transferred at the same rates now charged by Whittier Water Company, and for permission to execute a trust deed and note for $50,000 and to issue $60,300 of stock.

Whittier Water Company, among other properties, owns and operates what is known as the Judson Water System, which includes, according to Exhibit 1, about forty acres of water-bearing land contiguous to the San Gabriel River; certain wells and pumping plants located on these lands; transmission mains of concrete pipe and conduit about 21,000 feet long, to the Orchard Dale pumping plant. From this pumping plant a transmission main, operated under lease by Whittier Water Company, extends through the Orchard Dale district to the Colima road, a distance of about 6000 feet. An 18-inch pipe line, owned by Whittier Water Company, extends along the Colima road about 8000 feet to Whittier boulevard.

It appears that Whittier Water Company is engaged in selling and distributing water, chiefly for irrigation purposes, as a public utility water company and also in disposing of water not dedicated to public use, under contract.

Whittier Water Company reports that the two classes of water and service are mingled and it alleges that the differences between the two have caused dissatisfaction among its patrons. This application has been filed, in part, pursuant to a plan to segregate the different classes of business and to relieve it of certain litigation in connection with its water rights in its Judson Water System.

In this connection it seems that in 1917, the superior court in and for the county of Los Angeles confirmed to Whittier Water Company the right to take from the Judson lands one thousand (1000) miner's

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inches of water by means of pumping from one or more wells. Of the one thousand inches the company heretofore has conveyed to La Habra Heights Mutual Water Company one hundred and seventy-five (175) inches. Of the remaining eight hundred and twenty-five (825) inches La Habra Heights Company has claimed to own, by virtue of a contract with Whittier Water Company, an additional one hundred and twenty-five (125) inches. Litigation has been pending over these one hundred and twenty-five (125) inches.

In order to effect the segregation of the two classes of business and a settlement of the litigation, Whittier Water Company, under date of June 3, 1927, made and entered into an agreement with Edwin G. Hart, Incorporated, whereby it agreed to sell the Judson Water System to Edwin G. Hart or his nominees. Under the arrangements made, Whittier Water Company proposes to convey to the La Habra Heights Company the one hundred and twenty-five (125) miner's inches of water under controversy in consideration of the settlement of the pending litigation; to convey to La Habra Heights Mutual Water Company an easement to produce on and divert from Lot 1 of Tract 1910 of the Rancho Paso de Bertolo, one hundred and seventy-five (175) miner's inches of water and to transport such water to the Orchard Dale pumping plant, in consideration of the release of an obligation on the part of Whittier Water Company to deliver or construct pipe lines for the delivery of said one hundred and seventy-five (175) inches, and to convey to La Mirada Mutual Water Company, for $132,000, six hundred (600) miner's inches of water, Lot 1 of Tract 1910, referred to above, subject to the aforesaid easement, and the physical property comprising the water system. It reserves to itself only one hundred (100) of the one thousand (1000) miner's inches originally confirmed to it. It alleges that the one hundred (100) miner's inches of water together with such other water which it owns will be sufficient to meet the demands of its remaining consumers.

La Mirada Mutual Water Company upon acquiring the water and properties from Whittier Water Company plans, in turn, to transfer to Orchard Dale Service Company the right to two hundred (200) of the six hundred (600) miner's inches of water it will receive from Whittier Water Company, together with an easement and right of way for the transportation of such water, and part of the distribution lines now used by Whittier Water Company in its Judson system. As consideration, Orchard Dale Service Company proposes to execute and deliver to La Mirada Mutual Water Company a trust deed and promissory note for $50,000, payable on or before December 31, 1942, with interest at the rate of 6.5 per cent per annum, and to issue $60,000 of its common capital stock. It also proposes at this time to issue $300 of stock to its incorporators

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When the transactions referred to herein have been carried into effect, nine hundred (900) miner's inches of the one thousand (1000) originally confirmed to Whittier Water Company will be held as follows:

By La Habra Heights Mutual Water Company	175
By La Habra Heights Company	125
By La Mirada Mutual Water Company	400
By Orchard Dale Service Company	200

The physical properties of Whittier Water Company comprising the present Judson Water System will be held by La Mirada Mutual Water Company and Orchard Dale Service Company, the former holding the forty acres of land, the pumping plants and the transmission system; and the latter holding the right to two hundred (200) miner's inches of water, the easement referred to and the distribution system in the Orchard Dale and Luitweiler districts.

The purchasers have caused to be organized Hillside Distribution Co., to develop and distribute the nine hundred (900) miner's inches of water acquired from Whittier Water Company. The Hillside Distribution Co. proposes to issue nine hundred (900) shares of the total par value of $9,000, to the holders of nine hundred (900) inches of water, referred to above, in proportion to their ownership of such water. It will be its function to manage and operate the wells, pumping plants and system of La Mirada Mutual Water Company and deliver water, in a wholesale manner, at cost, to its stockholders. Orchard Dale Service Company thus will receive its water supply, by virtue of its ownership of two hundred (200) miner's inches, through the La Mirada Mutual Water Company's system as operated by the Hillside Distribution Co., and will make retail deliveries to irrigators and domestic consumers within its proposed service area—the Orchard Dale and Luitweiler districts—at the public utility rate now in effect under the Whittier Water Company.

La Mirada Mutual Water Company and Hillside Distribution Co. have filed, as Exhibits "B" "C" and "D" attached to Application No. 14680, copies of declarations whereby they agree that the Commission may examine their books, records and accounts for the purpose of determining the actual cost of operating and maintaining the wells, pumping plaints and distribution systems through which Orchard Dale Service Company will receive its water supply. The form of the declarations is satisfactory. The parties in interest should file verified copies of the same properly filled out and duly and legally executed.

ORDER.

Applications having been filed with the Commission, as indicated above, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the applications

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should be granted as herein provided, and that the money, property or labor to be procured or paid for by Orchard Dale Service Company through the issue of the stock and notes herein authorized is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, as follows:

1. In settlement of the action now pending in the superior court in and for the county of Los Angeles, in which the La Habra Heights Company is plaintiff and Whittier Water Company is defendant, Whittier Water Company may convey to La Habra Heights Company one hundred and twenty-five (125) miner's inches of water out of the one thousand (1000) miner's inches of water confirmed to the Whittier Water Company by judgment of the superior court in and for the county of Los Angeles, entered November 30, 1917, in book 421 at page 213 of judgments by deed substantially in the form of the contract. Exhibit "A" attached to the petition in Application No. 14456, and convey an easement to La Habra Heights Mutual Water Company by deed in substantially the form of the contract attached to the petition in Application No. 14456 and marked Exhibit "D."

2. Whittier Water Company may convey to La Mirada Mutual Water Company six hundred (600) miner's inches of water out of the aforesaid one thousand (1000) inch water right together with lot 1 of Tract 1910 of the Rancho Paso de Bartolo in the county of Los Angeles and the pipe lines and equipment, by deed in substantially the form of the contract attached to the petition in Application No. 14456 and marked Exhibit "B."

3. Upon the assumption of the public utility service by the Orchard Dale Service Company, referred to in this order, Whittier Water Company is relieved and discharged of the obligations to serve water as a public utility within the area or to the users designated upon the contract and the map attached thereto filed as Exhibit "C" in Application No. 14456.

4. La Mirada Mutual Water Company shall sell and convey to the Orchard Dale Service Company, free and clear of all liens and encumbrances, the following properties:

> Two hundred miner's inches of water out of the 1000 miner's inches of water confirmed to Whittier Water Company by the judgment of the superior court of the State of California in and for the county of Los Angeles, entered November 20, 1917, in book 421, page 213, of judgments of said court, in an action therein then pending, entitled *Cate Ditch Company et al., Plaintiffs,* vs. *Whittier Water Company et al., Defendants,* together with an easement and right of way for the production and transportation of said 200 inches in and through the wells and pumping plant or plants used for the production of said 1000 inches, now or hereafter situated on lot 1 of Tract 1910 of the Rancho Paso de Bartolo, as per map recorded in book 21 of maps, page 159, in the office of the county recorder of said county of Los Angeles (not including, however, any well or pumping plant of Whittier Water Company situate on that portion of said lot 1 reserved by said company in deed from it to beneficiary

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herein conveying said lot 1), and in and through that certain pipe line known as the "La Mirada pipe line" and any replacement thereof or substitution therefor from said wells and pumping plant or plants to the point or points in said La Mirada pipe line where said Whittier Water Company has heretofore delivered water into certain lateral pipe lines known as its "Orchard Dale Service Lines";

Also certain pipe lines known as "Colima 18," "Orchard Dale," "Luitweiler," "Mendenhall 8," "Cein," and "Clark Domestic lines," and all other pipe lines or interests or easements therein, meters and equipment in the "Orchard Dale" and "Luitweiler" tracts heretofore used by said Whittier Water Company in distributing water in said tracts.

5. Orchard Dale Service Company is authorized to dedicate to the public use the 200 miner's inches of water and the water properties it will receive from La Mirada Mutual Water Company and is hereby granted a certificate of public convenience and necessity to sell and deliver water to the public within the Orchard Dale and Luitweiler districts, more particularly described in the petition in Application No. 14680; such water to be sold and delivered at the rates now charged by Whittier Water Company.

6. Orchard Dale Service Company is authorized to execute and deliver to La Mirada Mutual Water Company a deed of trust substantially in the same form as that attached to Application No. 14680 and its promissory note secured thereby in the principal amount of $50,000, payable on or before December 31, 1942, with interest at the rate of 6.5 per cent per annum, in part payment for the properties to be received from La Mirada Mutual Water Company.

7. Orchard Dale Service Company is authorized to issue to La Mirada Mutual Water Company six hundred (600) shares of its capital stock of the total par value of $60,000 in further consideration for the properties to be received from La Mirada Mutual Water Company.

8. Orchard Dale Service Company is authorized to issue and sell, for cash at not less than par, $300 of its capital stock and to use the proceeds for organization expenses.

9. The authority herein granted is subject to the following conditions:

(a) The $50,000 note and the $60,000 of stock, herein authorized to be issued, shall be the total consideration paid by Orchard Dale Service Company for the properties to be received by it from La Mirada Mutual Water Company under the authority herein granted.

(b) The securities herein authorized to be issued by Orchard Dale Service Company shall not hereafter be urged before this Commission, or other public body or court, as a measure of value of the properties to be acquired by Orchard Dale Service Company for the purpose of fixing rates, or any purpose, other than this transfer.

(c) Within ten days after acquiring control and possession of the properties, as herein authorized, Orchard Dale Service Company shall file a statement showing the exact date upon which it acquired such

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control and possession and upon which Whittier Water Company relinquished such control and possession.

(d) Within sixty days after the transfers of properties herein authorized have been made, applicants shall file with the Commission certified copies of all the deeds of conveyance executed to effect such transfers.

(e) La Mirada Mutual Water Company and Hillside Distribution Co. shall file with the Commission declarations or stipulations, duly and legally authorized by their boards of directors, similar in form to Exhibits "B," "C" and "D" attached to the petition in Application No. 14680.

(f) The authority herein granted to execute a deed of trust is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said deed of trust as to such other legal requirements to which said deed of trust may be subject.

(g) Orchard Dale Service Company shall keep such record of the issue and delivery of the stock and the note herein authorized and of the disposition of the proceeds, as will enable it to file, on or before thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order in so far as applicable, is made a part of this order.

(h) The authority herein granted to issue a note will become effective when Orchard Dale Service Company has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $50. In other respects the authority herein granted will become effective twenty days from the date hereof.

Dated at San Francisco, California, this twenty-ninth day of May, 1928.

DECISION No. 19836.

IN THE MATTER OF THE APPLICATION OF THE SUNSHINE WATER CO., INC., FOR AUTHORIZATION TO TRANSACT WATER BUSINESS IN TRACTS 7868, 7920, 10298 AND ADDITIONS IN THE COUNTY OF LOS ANGELES.

Application No. 14612.

Decided May 29, 1928.

CERTIFICATES—WATER UTILITY.—Sunshine Water Company authorized to operate a domestic water system in Los Angeles County.

Thomas A. Young, for Applicant.

BY THE COMMISSION.

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OPINION.

In the above entitled application, the Sunshine Water Co., Inc., asked for a certificate of public convenience and necessity to operate a domestic water system to supply water to the inhabitants of Tracts Nos. 7868, 7920, 10298 and (by amendment to the application) Tract No. 9891, in Los Angeles County. A schedule of rates to be charged for such service was also requested.

A public hearing in this matter was held before Examiner Williams in Los Angeles, after all interested parties had been duly notified and given an opportunity to be present and be heard.

At the hearing, applicant requested that the above application be amended to include Tract No. 9891, Los Angeles County.

The evidence shows that this water system was installed during the past year by Thomas A. Young and Edward M. Loftus, copartners, to aid in the sale of lots in the above mentioned tracts. The water supply is obtained from a well 250 feet deep, equipped with automatic pumping equipment which delivers the water into a storage tank, from which it is distributed by gravity to the consumers through six- and eight-inch riveted steel mains. A franchise has been obtained from the county of Los Angeles covering this area, known as Ordinance No. 1448 (new series). There are approximately 434 lots in the above numbered tracts, ranging from the ordinary lot of 50 by 150 feet to an acre in size. At the present time, there are about seventy consumers receiving water.

No one appeared at the hearing to protest the granting of this application and it would seem that public necessity demands that it be granted. The rates proposed by applicant are reasonable compared with other utilities operating in the vicinity under similar conditions.

ORDER.

Sunshine Water Co., Inc., having made application as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require and will require that Sunshine Water Co., Inc., construct and operate a water system for the purpose of supplying water for domestic purposes in Tracts Nos. 7868, 7920, 10298 and 9891, in Los Angeles County, provided applicant herein file with this Commission, within twenty days from the date of this order, a resolution, duly passed and approved by its board of directors, to the effect that said applicant, its successors or assigns will never claim for said franchise a value in excess of the actual cost of securing same.

It is hereby ordered, that Sunshine Water Co., Inc., be and it is hereby authorized and directed to file with the Railroad Commission

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of the State of California, within twenty days from the date of this order, the following schedule of rates to be charged for all service rendered subsequent to the thirty-first day of May, 1928:

WATER RATES

Monthly minimum charges for metered use.

⅝-inch meter	$1.50
¾-inch meter	2.00
1 -inch meter	3.00
1½-inch meter	5.00
2 -inch meter	9.00

Quantity rates per cubic feet.

1,000 cubic feet for	$1.50 minimum
Next 2,000 cubic feet for	.12 per 100 cubic feet
Next 3,000 cubic feet for	.10 per 100 cubic feet
All over 6,000 cubic feet for	.08 per 100 cubic feet

It is hereby further ordered, that Sunshine Water Co., Inc., be and it is hereby directed to file with the Railroad Commission, within thirty days from the date of this order, for approval, rules and regulations governing the distribution of water to its consumers, said rules and regulations to become effective upon their acceptance by the Commission.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this twenty-ninth day of May, 1928.

DECISION No. 19837.

IN THE MATTER OF THE APPLICATION OF BELVEDERE WATER CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED APPLICANT BY THE COUNTY OF LOS ANGELES UNDER ORDINANCE No. 1523 (NEW SERIES).

Application No. 14560.

Decided May 29, 1928.

CERTIFICATES—WATER UTILITY.—California Water Service Company (successor to Belvedere Water Corporation) authorized to extend water system.

McCutchen, Olney, Mannon and Greene, by *Victor Klever,* for Applicant.

BY THE COMMISSION.

OPINION.

Belvedere Water Corporation, applicant in the above entitled proceeding, operating a public utility water system supplying water to a large territory contiguous to the easterly boundary of the city of Los Angeles known as Belvedere, asks the Railroad Commission for a certificate of public convenience and necessity to exercise rights and privi-

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leges heretofore granted to it by the county of Los Angeles under Ordinance No. 1523 (new series), as set forth in Exhibit "A" attached to the application herein.

A public hearing in this matter was held before Examiner Williams, at Los Angeles, after due notice thereof had been given.

At the hearing, applicant filed an amendment to the application in which the California Water Service Company joined in the application as successor in interest to the properties of the Belvedere Water Corporation, and requested that the matter be held in abeyance until such time as the transfer could be completed. As this has now been completed, the California Water Service Company will be substituted for the Belvedere Water Corporation, in so far as this proceeding is concerned.

Applicant herein has for several years supplied water to a large area adjacent to the city of Los Angeles known as Belvedere, and is, therefore, financially able to extend its water distributing facilities and render adequate service throughout the area covered by its franchise rights granted in Ordinance No. 1523 (new series), county of Los Angeles. No one protested against the granting of this application, and, as there is no other public utility water system now furnishing water within the territory covered by the above franchise, it appears that the request should be granted.

ORDER.

California Water Service Company, successor in interest to the properties of the Belvedere Water Corporation, having made application as entitled above, a public hearing having been held thereon, the matter having been submitted, and the Commission being now fully advised in the premises:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require and will require that California Water Service Company operate a water system for the purpose of supplying water to consumers residing in the area as more particularly described in Ordinance No. 1523 (new series), county of Los Angeles, provided applicant herein file with this Commission, within twenty days from the date of this order, a resolution, duly passed and approved by its board of directors, to the effect that said applicant, its successors or assigns will never claim for said franchise a value in excess of the actual cost of securing same.

The authority granted herein shall become effective on the date hereof.

Dated at San Francisco, California, this twenty-ninth day of May, 1928.

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DECISION No. 19846.

IN THE MATTER OF THE APPLICATION OF TARKE WAREHOUSE COMPANY, A CORPORATION, FOR ORDER AUTHORIZING THE ISSUE OF STOCK.

Application No. 14677.

IN THE MATTER OF THE APPLICATION OF TARKE WAREHOUSE COMPANY, A CORPORATION, TO ACQUIRE CAPITAL STOCK OF OLD PIONEER MILL WAREHOUSE COMPANY, A CORPORATION.

Application No. 14724.

Decided May 29, 1928.

SECURITY ISSUES—STOCK.—Tarke Warehouse Company authorized to sell at not less than par $7,000 of its capital stock, and to acquire $5,000 of the capital stock of Old Pioneer Mill Warehouse Company.

Rich and Weis, for Applicant.

BY THE COMMISSION.

OPINION.

In Application No. 14677 Tarke Warehouse Company asks permission to issue, at par, 170 shares of its common capital stock of the aggregate par value of $17,000 for the purpose of obtaining funds to liquidate indebtedness and provide for the extension of its business.

In Application No. 14724 Tarke Warehouse Company asked permission to acquire, at par, and to hold 50 shares of the common capital stock of Old Pioneer Mill Warehouse Company of the aggregate par value of $5,000.

It appears that Tarke Warehouse Company was organized on or about May 2, 1925, with an authorized capital stock of $30,000, divided into 300 shares of the par value of $100 each, all common, of which $13,000 is now outstanding, having been issued pursuant to authority granted by this Commission in Decision No. 15007, dated June 3, 1925, in Application No. 11112.

The company is engaged in the bean cleaning and public utility warehousing business at Tarke Station, Sutter County, on the lines of the Sacramento Northern Railway. The application shows that its properties consist of 1.62 acres of land, and, located thereon, a modern corrugated iron warehouse and office building, a six-room frame dwelling house, garage and water tank, together with a bean cleaner, warehouse machinery and equipment, office furniture and fixtures and miscellaneous personal property. It reported, in the former application, that its properties were acquired at that time at a cost of $23,000, of which it financed $13,000 through the issue of the stock authorized by Decision No. 15007 and $10,000 through the issue of a one-year 7 per cent note.

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Applicant now reports its actual investment in its properties up to May 1, 1928, at $37,580.20, as shown in its Exhibit "A" attached to Application No. 14677. Its balance sheet, as of that date, is reported as follows:

Assets.

Real estate and building	$28,313 11	
Machinery and equipment	8,077 18	
Furniture and fixtures	399 91	
Automobiles	790 00	
Subtotal		$37,580 20
Cash		81 96
Accounts receivable		1,815 76
Total assets		$39,477 92

Liabilities.

Capital stock	$13,000 00
Notes payable	11,000 00
Accounts payable	244 24
Reserve for depreciation	4,024 50
Surplus and undivided profits	11,209 18
Total liabilities	$39,477 92

In addition to the original indebtedness of $10,000, Exhibit "A" shows that the company on May 1, 1928, was indebted to the Bank of Italy, on a short term note, in the amount of $1,000, making a total note indebtedness of $11,000.

It is now proposed to issue an additional short term note to the Bank of Italy for $4,000 and to use the moneys thus obtained, together with cash on hand or otherwise available, to purchase at par, $5,000 of the common capital stock of Old Pioneer Mill Warehouse Company, a corporation recently organized to conduct a bean cleaning and warehousing business in Sacramento. The Old Pioneer Mill Warehouse Company was authorized by Decision No. 19803, dated May 23, 1928, to issue and sell $16,000 of common stock, at par, to pay for certain bean cleaning and warehouse properties and to provide working capital.

When borrowing the additional $5,000, applicant will have outstanding notes payable of $15,000. The company's stockholders have agreed among themselves to advance money, from time to time, to reduce the indebtedness, provided stock be issued in reimbursement of such advances.

ORDER.

Tarke Warehouse Company having applied to the Railroad Commission for permission to issue $17,000 of stock and to acquire and hold $5,000 of the stock of Old Pioneer Mill Warehouse Company, and the Commission being of the opinion that these applications are matters in which public hearings are not necessary; that the requests of applicant should be granted, as herein provided; and that the money, prop-

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erty or labor to be procured or paid for through the issue of the $17,000 of stock is reasonably required for the purposes specified herein, which purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that Tarke Warehouse Company be and it hereby is authorized to acquire, at par, and to hold $5,000 par value of the common capital stock of Old Pioneer Mill Warehouse Company.

It is hereby further ordered, that Tarke Warehouse Company be and it hereby is authorized to issue and sell, on or before June 30, 1930, at not less than par, $17,000 of its common capital stock and to use $15,000 of the proceeds to pay the $15,000 indebtedness, now outstanding or to be incurred in connection with the purchase of the stock of Old Pioneer Mill Warehouse Company, or, as an alternative, to deliver, at par, $15,000 of the stock herein authorized to be issued in payment of $15,000 advanced, or to be advanced, by applicant's stockholders to liquidate the indebtedness of $15,000, and to use the remaining proceeds of $2,000 for working capital.

The authority herein granted is subject to the following conditions:

(1) Applicant shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(2) The authority herein granted shall become effective upon the date hereof.

Dated at San Francisco, California, this twenty-ninth day of May, 1928.

DECISION No. 19850.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC ELECTRIC RAILWAY COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE MOTOR COACH LINES IN THE CITY OF SANTA ANA, STATE OF CALIFORNIA.

Application No. 14478.

Decided June 1, 1928.

CERTIFICATES—MOTOR COACH—RATES.—Pacific Electric Railway Company authorized to reroute motor coach lines in Santa Ana, establish five-cent fare and to interchange transfers with its rail lines within local fare limits.

C. W. Cornell and *H. O. Marler*, for Applicant.

BY THE COMMISSION.

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OPINION.

This is an application of Pacific Electric Railway Company for a certificate of public convenience and necessity to operate motor coach lines within the city of Santa Ana, California. A public hearing was conducted before Examiner Williams at Santa Ana on May 9, 1928, at which time the matter was submitted.

Operation of motor coach lines within Santa Ana city limits was inaugurated August 1, 1922. The operations were at that time and have subsequently been conducted under franchise from the city.

Applicant now desires, as shown by the record and by exhibits filed subsequent to the hearing, to reroute its lines, change its service, reduce the present 7-cent fare (four tickets for 25 cents) to 5 cents, and interchange transfers with the rail lines within local limits of Santa Ana.

The record shows that the existing service is carried on at a heavy operating loss, the results of operation for the years 1926 and 1927, on an out-of-pocket basis, being as follows:

	1926	*1927*	*Estimated after changes*
Operating revenues	$34,417 96	$32,614 66	$32,378 00
Operating expenses	52,691 72	43,826 22	31,888 57
Net	$18,273 76*	$11,211 56*	$489 43
Taxes	2,617 51	2,671 03	2,510 42
Total loss	$20,891 27*	$13,882 59*	$2,020 99*

* Red figure.

The changes in routes and readjustments in service proposed by applicant, it is estimated, will not materially affect its revenues, but will reduce the expense of operation to a point where, together with the fact that the coaches assigned to this service have practically been fully depreciated, the operation will be placed on a better financial basis. There will still remain, however, a loss of $2,020.99 for the year. It should be pointed out, also, that when renewals of the motor coaches are necessary and a depreciation allowance again made, the loss will be greater than that estimated.

While no appearance was entered at the hearing on behalf of the city of Santa Ana, the record shows that the changes in routes and service have been discussed with and are acceptable to the city council of Santa Ana.

Applicant amended its application subsequent to the hearing to provide for a reduction in the present fares of 7 cents, or four tickets for 25 cents, to a flat 5-cent basis, including transfer to or from the rail line, for the purpose of determining whether sufficient additional business would result to justify the reduction.

We find that the public convenience and necessity warrant the granting of the application.

ORDER.

Pacific Electric Railway Company, a corporation, having applied to the Railroad Commission for a certificate of public convenience and

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necessity to operate motor coach lines in the city of Santa Ana, California, a public hearing having been held, the matter having been duly submitted and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment and operation by applicant Pacific Electric Railway Company, of motor coach lines in the city of Santa Ana, California, over and along the following routes:

> Commencing at Washington and Lincoln avenues, west on Washington avenue, south on French and Minter streets, west on Fourth street, south on Parton street, west on Camille street, south on Garnsey street, east on Fairview avenue, south on Van Ness avenue, east on St. Gertrude place, north on Main street, west on Fourth street, south on Parton street, west on Second street, north on Artesia street to Fourth street.
>
> Returning, from Fourth and Artesia streets, thence south on Artesia street, east on Second street, north on Parton street, east on Fourth street, south on Main street, west on St. Gertrude place, north on Van Ness avenue, west on Fairview avenue, north on Garnsey street, east on Camille street, north on Parton street, east on Fourth street, north on Minter and French streets, thence east on Washington avenue to Lincoln avenue.
>
> A tripper service to be operated, commencing at Fourth and Artesia streets via Artesia street to Second street, thence Second street to Parton street, Fourth street, French street, First street to Santa Fe street, returning reverse of said route; and

It is hereby ordered, that a certificate of public convenience and necessity for such service be and the same is hereby granted to applicant Pacific Electric Railway Company, a corporation, subject to the following conditions:

I. Applicant shall file with this Commission, within a period of not to exceed ten days from date hereof, its written acceptance of the certificate herein granted.

II. Applicant shall file, in duplicate, within a period of not to exceed twenty days from date hereof, time schedules, such time schedules to be identical with those attached to the application herein or time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty days from the date hereof.

III. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

IV. No vehicle may be operated by applicant under the authority herein granted unless such vehicle is owned by applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

It is hereby further ordered, that Pacific Electric Railway Company, a corporation, be and it is hereby authorized to establish, on one day's notice to the Railroad Commission and to the public, a 5-cent fare on

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the motor coach lines herein authorized, including transfer to and from applicant's rail lines within the local fare limits of Santa Ana.

For all purposes except as hereinabove specified, the effective date of this order shall be twenty days from and after the date hereof.

Dated at San Francisco, California, this first day of June, 1928.

DECISION NO. 19854.

VAN CAMP SEA FOOD COMPANY, A CORPORATION,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY, A CORPORATION.

Case No. 2490.

Decided June 1, 1928.

REPARATION.—Los Angeles and Salt Lake Railroad Co. directed to make reparation to Van Camp Sea Food Company on 37 carloads of canned goods shipped from Los Angeles to East San Pedro.

RATES—REASONABLENESS—COMPARISONS—NECESSITY OF SIMILARITY.—A showing of commodities not of the same general nature, value and volume of movement is of little probative value in a reparation proceeding.

REPARATION—CIRCUMSTANCES DETERMINING RIGHT—SUBSEQUENT REDUCTION.—Generally, a subsequent rate reduction is not in and of itself sufficient to warrant an award of reparation. However, every shipper is entitled to a reasonable rate, whether commodity or class, and where the prior rate is in question the issues must be decided on their merits regardless of the fact that the rate upon which reparation is sought may have been voluntarily established.

REPARATION—RIGHT TO RECOVER—STATUTE OF LIMITATIONS.—Section 71 (*b*) of the Public Utilities Act provides that complaints seeking reparation shall be filed within two years from the time the cause of action occurs. The Railroad Commission and the Interstate Commerce Commission have followed the practice of considering an informal complaint as having the same force and effect as a formal complaint.

F. W. Turcotte and *B. H. Carmichael*, for Complainant.
Fred E. Pettit, Jr., and *J. P. Quigley*, for Defendant.

BY THE COMMISSION.

OPINION.

Complainant is a corporation organized under the laws of the State of California, engaged in the canning business at East San Pedro. It alleges by this complaint filed January 30, 1928, that the rate charged for the transportation of 37 carloads of canned goods shipped from Los Angeles to East San Pedro during the period from September 13 to October 24, 1923, inclusive, was unjust and unreasonable in violation of section 13 of the Public Utilities Act to the extent it exceeded 7 cents.

Reparation only is sought. Rates are stated in cents per 100 pounds.

An informal complaint covering the shipments involved was filed September 21, 1925, and appears of record in our files under No. I. C. 33724.

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Public hearings were held at Los Angeles before Examiner Geary, May 2 and 3, 1928, and the case having been duly submitted is now ready for an opinion and order.

The shipments consisted of tomato paste, tomato catsup, tomato puree, olives and grapefruit, and averaged 50,251 pounds per car. There was no commodity rate during the period these shipments moved, and the charges were assessed on the basis of the minimum scale fifth class rate of 11 cents, published in L. A. and S. L. R. R. Tariff No. 116-E, C. R. C. No. 294. The complainant points out that a rate of 7 cents was not only applicable to canned goods but it is the specific fifth class rate and applies to canned fruit and vegetables when the movement is to or from East San Pedro by water carriers. Furthermore, it applies to all commodities moving between East San Pedro and Los Angeles when the through line haul rates are made by combination over Los Angeles. The minimum scale fifth class of 11 cents is only assessed when the commodity moves locally between Los Angeles and East San Pedro. There was testimony to the effect that the commodities involved in the instant proceeding were sent to the cannery at East San Pedro to be used in the manufacture of canned fish or were for consolidation with carload lots to line haul destination points. The consolidated classification rates canned fruits and vegetables in carloads fifth class, minimum weight 36,000 pounds, and this same rate applies on many other canned goods, including canned milk.

The complainant seeks reparation to the basis of the subsequently established commodity rate of 7 cents, effective October 25, 1923, and compares the rate with the contemporaneous rates and earnings on canned goods between points in the same general territory, also between points in central and northern California. The following table of rates on canned goods, taken from exhibits of record, illustrates the situation:

		Earnings		
	Miles	*Per 100 pounds (cents)*	*Per ton mile (mills)*	*Per car mile (cents)*
From Los Angeles to East San Pedro	27	*11	81.48	204.74
From Los Angeles to East San Pedro	27	†7	51.85	130.30
From Ontario to Colton	27	7	51.85	130.30
From Pasadena to Pomona	42	11	52.38	131.62
From Fresno to Hanford	31	7	45.16	113.48
From Hanford to Visalia	20	7	70.00	175.90
From Los Gatos to San Jose	11	3½	63.64	159.91
From Sacramento to Stockton	48	9	37.50	94.23
From Hayward to Oakland	15	5	66.66	167.53

* Rate charged.
† Rate sought.

Comparisons were also made by the complainant with rates on selected commodities from Los Angeles to East San Pedro which are on a lower level than that of the rate assailed.

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In further support of its allegation of unreasonablness the complainant relies upon our decision in Case No. 2028, *H. G. Prince & Co.* vs. *Southern Pacific Co.*, 27 C. R. C. 531. In that case we found that the rate of 7 cents on canned goods, carload, from Hayward to Oakland was unreasonable subsequent to July 30, 1922, and for the future to the extent it exceeded 5 cents, and awarded reparation. The transportation conditions between these points are similar to those between Los Angeles and East San Pedro.

Defendant maintains that the rate charged was not unreasonable and that canned goods do not move from and to East San Pedro with any degree of regularity, and therefore class rates are provided for just such occasional movements. The record, however, would indicate that there is a substantial annual movement during particular months in the year to meet the necessities of the cannery at East San Pedro during the operating period.

Defendant also refers to certain commodities classified as fifth which, if moved between Los Angeles and East San Pedro,, would take the classification rate, there being no commodity rates published. This showing, however, of commodities not of the same general nature, value and volume of movement is of little probative value in determining the issues here involved.

The rate comparisons submitted indicate a lack of uniformity in the rates on canned goods in the territory under discussion. The defendant urges that reparation should not be granted principally on the grounds that the rate complainant seeks was voluntarily established after the shipments moved. As a general principle, subsequent reduction of a rate over the route of movement is not in and of itself sufficient justification to warrant an award of reparation. However, every shipper is entitled to a reasonable rate, whether commodity or class, and where the prior rate is called into question the issues must be decided on their merits regardless of the fact that the rate upon which the reparation is sought may have been voluntarily established.

After giving consideration to all the testimony and exhibits we are of the opinion and find that the rate charged was unreasonable to the extent that it exceeded 7 cents; that complainant made the shipments as described and paid and bore the charges thereon at the rate found unreasonable, that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable, and that it is entitled to reparation with interest at the rate of 6 per cent per annum.

Defendant in its answer to the complaint alleges since the transportation of the commodities involved was performed between the dates September 13, 1923, and October 24, 1923, that complainant's cause

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for action is barred by reason of the provisions of section 71, subparagraph (*b*) of the Public Utilities Act, reading as follows: "All complaints concerning unreasonable, excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues." As stated in the beginning of this opinion, complainant did enter an informal complaint September 21, 1925, which complaint appears of record in our official files under number I. C. 33724. This Commission and the Interstate Commerce Commission for many years have followed the practice of considering an informal complaint as having the same force and effect as a formal complaint, and there is nothing in this record to justify a change in the practice on the part of this Commission.

Complainant will submit statement of shipments to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

ORDER.

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that defendant, Los Angeles and Salt Lake Railroad Company, be and it is hereby authorized and directed to refund with interest at 6 per cent to complainant, Van Camp Sea Food Company, all charges it may have collected in the amount of the difference between the freight charges paid and those that would have accrued at 7 cents per 100 pounds on the shipments involved in this proceeding and moved from Los Angeles to East San Pedro during the period from September 13 to October 24, 1923, inclusive.

Dated at San Francisco, California, this first day of June, 1928.

DECISION No. 19857.

IN THE MATTER OF THE APPLICATION OF THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A CORPORATION, AND ALAMEDA BELT LINE, A CORPORATION, FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA (1) AUTHORIZING SAID ALAMEDA BELT LINE TO ISSUE AND SELL FIVE THOUSAND SHARES ADDITIONAL OF ITS COMMON CAPITAL STOCK OF THE PAR VALUE OF ONE HUNDRED DOLLARS PER SHARE; AND (2) AUTHORIZING THE WESTERN PACIFIC RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO PURCHASE SAID CAPITAL STOCK.

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Application No. 14658.
Decided June 5, 1928.

SECURITY ISSUES—STOCK—PURCHASE OF BY ANOTHER UTILITY.—Alameda Belt Line authorized to issue and sell at par $500,000 of its common capital stock, and The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company authorized to acquire and hold such stock.

H. P. Tyler, for Alameda Belt Line.
Platt Kent and *J. R. Hayden*, for The Atchison, Topeka and Santa Fe Railway Company.
F. M. Angellotti, for The Western Pacific Railroad Company.

BY THE COMMISSION.

OPINION.

In the above entitled matter the Railroad Commission is asked to make an order authorizing Alameda Belt Line to issue and sell, at par for cash, $500,000 of its common capital stock and authorizing The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company to acquire said stock in equal proportions.

Alameda Belt Line is a corporation organized under the laws of the State of California for the purpose of engaging in the business of a common carrier by railroad, and especially to acquire, extend and operate a belt line railroad in the city of Alameda to serve the industrial area and water front section. In Application No. 10888, filed with the Commission on March 3, 1925, it estimated at $494,535.58 the cost of acquiring the existing line belonging to the city of Alameda and of extending it in a general westerly direction to the westerly line of Webster street, including a line to the freight ferry slip located on the estuary of San Antonio, with an interchange track on Clement avenue between Broadway and Park street, and of extending it in a general westerly direction from the westerly line of Webster street to the shore line of San Francisco Bay, together with classification yard, track scales, water and oil facilities, etc. It asked, in that proceeding, and by Decision No. 15177, dated July 14, 1925, received permission to issue $500,000 of stock to finance its estimated costs.

The company now reports that it has issued and sold the $500,000 of stock authorized by the former decision. It further reports, however, that additional industrial development in the city of Alameda has demanded additional trackage and that it has increased the estimated cost of the extension to Webster street from $389,018.35 to $827,248.72 and of the extension west of Webster street from $75,527.23 to $160,000. These revised estimates, together with the $30,000 spent in purchasing the city of Alameda's line, thus will call for total expenditures of $1,017,248.72.

Up to April 30, 1928, the company reports expenditures for road and equipment of $695,049.41. It reports that the amounts expended in

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excess of the receipts from the $500,000 of stock heretofore authorized have been advanced, in equal amounts, by The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company. Applicant proposes to issue stock to these two companies to liquidate at par these cash advances and to sell the remainder of the $500,000 of stock at par, for cash, to provide, in part, the remainder of the estimated construction costs.

ORDER.

Alameda Belt Line, having applied to the Railroad Commission for permission to issue and sell $500,000 of stock, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required for the purposes specified herein, which expenditures are not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Alameda Belt Line be and it hereby is authorized to issue and sell, at par, for cash, $500,000 of its common capital stock and to use the proceeds to finance in part the cost of acquiring or constructing its road and equipment, as set forth in Exhibit No. 1, or to deliver at not less than par, such stock, or any portion thereof, to pay indebtedness incurred for the purpose of paying for its road and equipment.

It is hereby further ordered, that The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company be and they hereby are authorized to acquire and hold, in equal proportions, the $500,000 of stock which Alameda Belt Line herein is authorized to issue.

The authority herein granted is subject to the following conditions:

(1) Alameda Belt Line shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds, as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(2) The authority herein granted will become effective upon the date hereof. Under such authority no stock may be issued after March 31, 1929.

Dated at San Francisco, California, this fifth day of June, 1928.

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DECISION No. 19860.

L. A. THORNEWILL

vs.

C. W. GREGORY AND R. C. GREGORY.

Case No. 2484.

Decided June 6, 1928.

AUTOMOTIVE TRANSPORTATION—UNLAWFUL OPERATION.—R. C. and C. W. Gregory found to be operating motor trucks as common carriers between Santa Cruz and San Francisco without having obtained a certificate, and ordered to cease and desist from such operation.

RES JUDICATA.—A conclusion in a prior decision denying a certificate that defendant was not then seeking business from the public generally, is not determinative of the public nature of the trucking business performed, in a complaint alleging common carrier operation without a certificate.

AUTOMOTIVE TRANSPORTATION—WHAT CONSTITUTES—CONTRACT CARRIERS.—It would be an evasion of the clear intent and purpose of the Auto Stage and Truck Transportation Act to permit a carrier, by the simple device of entering into a number of verbal agreements, terming them "contracts," to secure all of the advantages of a public motor carrier without assuming the attendant obligations and duties. By merely pretending to investigate each inquiry and discriminate in the selection of customers, a carrier otherwise public, does not change his status that he may be regarded as a private carrier (*Sanger* vs. *Lukens*, 24 Fed. (2d) 226; *Smitherman* vs. *Mansfield Lumber Co.*, 6 Fed. (2d) 29; *Restivo* vs. *West*, 129 Atl. 884, etc.).

Derlin and Brookman, by *Douglas Brookman*, for Complainant.
Rittenhouse and Snyder, by *Bert B. Snyder*, for Defendants.
W. S. Johnson, for Southern Pacific Company, an Interested Party.

BY THE COMMISSION.

OPINION.

It is alleged that the defendants are engaged in the business of operating motor trucks for compensation, as common carriers, over the public highways between Santa Cruz and San Francisco, without having obtained a certificate from this Commission. The complainant operates as a certificated carrier over the same route. The answer of defendants alleges that they operate exclusively under a group of private contracts, approximately fourteen in number, and that they do not solicit business from the public generally. The only question for decision is whether their business is that of a common carrier.

The defendants, father and son, apparently as partners, conduct the "Gregory Truck Service." Though R. C. Gregory, the son, is the legal owner, C. W. Gregory is the general manager and real head of the business. C. W. Gregory at one time applied for a certificate covering his operations (Application No. 12758), and it was found by the Commission (Decision No. 17928 issued January 26, 1927), that public convenience and necessity did not require his proposed operations. He declares that his operations now do not differ from what they were then, and, in view of the conclusion of the Commission in that decision

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to the effect that he was not then seeking business from the public generally, he contends that the Commission is precluded in this proceeding from making a contrary finding. We do not believe that we are so bound by that decision. The question raised as to the public nature of his business was not directly in issue in that proceeding, and our conclusion thereon is in no way determinative of our judgment in this case.

The operations of defendants may be described very briefly. They admit they are in the "trucking business." They carry an average of ten or more tons daily each way. Their trucks bear the sign "Gregory Trucking Service." Nearly all their business comes from twelve firms with whom they claim to have contracts, though it was clearly shown that such contracts in each case consist in nothing more than a verbal agreement as to the probable volume of goods to be hauled and the rate to be charged. Rates are uniform to all shippers. There is no question either that they do solicit business from prospective customers when there is a prospect of receiving a profitable volume. The testimony of C. W. Gregory, in answer to questions as to his accepting new customers, abounds in such statements as these: "We refuse to carry if it is beyond our capacity or capability." "We do not want small hauling jobs." "We prefer large lots." "Would take feed or canned goods running into tonnage, that is, I would consider it." "I would serve regular customers first." "If there is a heavy haul in sight, I sometimes solicit."

A number of witnesses produced by the complainant testified that Gregory had solicited their business, and none of those for whom he now hauls stated that there was any contract between them other than an understanding as to the rate to be charged. Gregory admits his readiness to make good all losses or damages to goods hauled, and his customers expect that this will be done.

It can hardly be seriously contended that the operations of these defendants are not of a common carrier nature. It would be an evasion of the clear intent and purpose of the Auto Stage and Truck Transportation Act (Stats. 1917, p. 330, as amended) to permit a carrier, by the simple device of entering into a number of verbal agreements, terming them "contracts," to secure all the advantages of a public motor carrier without assuming the attendant obligations and duties. The defendants have all the advantages of public carriers. They accept only the most desirable business, and will not accept new business unless it gives promise of considerable volume. By merely pretending to investigate each inquiry and discriminate in the selection of customers, a carrier, otherwise public, does not so change his status that he may be regarded a private carrier. *Sanger* vs. *Lukens,* 24 Fed. (2d)

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226; *Smitherman and McDonald* vs. *Mansfield Lumber Co.* (D. C.) 6 Fed. (2d) 29; *Restivo* vs. *West* (Md.) 129 Atl. 884; *State* vs. *Washington Tug Co.* (Utah), 250 Pac. 49; *Barbour* vs. *Walker*, 126 Okla. 227, 259 Pac. 552; *Craig* vs. *P. U. Commission of Ohio*, 115 Ohio St. 512, 154 N. E. 795; *Producers Transportation Co.* vs. *Railroad Commission*, 251 U. S. 228, 40 S. Ct. 131, 64 L. Ed. 239; *Re Champlin Refining Co.* (Okla.), 264 Pac. 160; *Re H. J. Martsfield*, P. U. R. 1926 E., 463; *Re Will Thome*, P. U. R. 1927 A., 860; *Lehigh Valley Transit Co.*, P. U. R. 1928 A., 606.

As said in *Restivo* vs. *West* (*supra*):

> It is difficult to determine with exactness just when the owner of a motor vehicle is operating as a common carrier, as that term is ordinarily understood in the law, but the courts have not been inclined to excuse the increasing numbers of those who earn their livelihood by transporting persons or goods for hire in motor vehicles from the responsibilities of common carriers simply on technical grounds, and they have been particularly slow to excuse them when their plan of operation bore evidence of being a studied attempt to reap the rewards of common carriers without incurring the corresponding liabilities.

Defendants cite the case of *Frost* vs. *Railroad Commission*, 271 U. S. 583, 46 S. Ct. 605, 70 L. Ed. 1101, and claim that it is controlling. That case, as well as others involving questions of statutory construction and the regulation of carriers admittedly private, is not in point.

We find that the defendants C. W. Gregory and R. C. Gregory are operating motor trucks used in the business of transportation of property, as common carriers, for compensation, over the public highways of this state between fixed termini and over a regular route, without first having obtained from this Commission a certificate declaring that public convenienee and necessity requires such operation, in violation of the Auto Stage and Truck Transportation Act. An order directing said defendants to cease and desist from said operation will be issued.

ORDER.

Complaint as above entitled having been filed, a public hearing having been held, the matter submitted, and now being ready for decision, and basing its order upon the conclusions and findings in the opinion above;

The Railroad Commission of the State of California hereby orders said C. W. Gregory and R. C. Gregory jointly and severally immediately to cease and desist from the operations above described.

It is hereby further ordered, that the secretary of the Railroad Commission be and he is directed to mail a certified copy of the order herein to the district attorneys of Santa Cruz and San Mateo counties and the city and county of San Francisco.

Dated at San Francisco, California, this sixth day of June, 1928.

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DECISION No. 19870.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY OF CALIFORNIA FOR AUTHORITY TO ISSUE AND SELL TEN MILLION DOLLARS FACE AMOUNT OF FOUR AND ONE-HALF PER CENT GOLD NOTES.

Application No. 14683.

Decided June 8, 1928.

SECURITY ISSUES—NOTES.—Great Western Power Company authorized to issue and sell at not less than 97 per cent of face value plus accrued interest $10,000,000 of three-year 4½ per cent notes to pay indebtedness and to reimburse treasury.

Chaffee E. Hall, for Applicant.

BY THE COMMISSION.

OPINION.

Great Western Power Company of California has applied to the Railroad Commission for permission to issue and sell, at not less than 97 per cent of their face value plus accrued interest, $10,000,000 of three-year 4½ per cent gold notes.

The company asks permission to use the proceeds to be received from the sale of its notes to reimburse its treasury for expenditures made prior to March 31, 1928, for additions and betterments to its plant and system and in retiring bonds and debentures, and to pay the cost of additions and betterments during the period from April 1, 1928, to December 31, 1928. In this connection it reports that it has expended, out of moneys derived otherwise than from the sale of securities, the sum of $6,784,551.78 for additions and betterments prior to March 31, 1928, and $642,774.25 in retiring general mortgage bonds, general lien bonds, first and refunding series "B" bonds and debentures; the two items aggregating $7,427,326.03. Although it asks permission to use the proceeds from the sale of its notes, in part, to reimburse its treasury because of such expenditures, the testimony herein indicates that a substantial portion of the money necessary for the aforesaid purposes was obtained from the Western Power Corporation. As of March 31, 1928, applicant owed the Western Power Corporation the sum of $4,977,727.89. On this indebtedness applicant is paying interest at the rate of 6 per cent per annum. It is reported to be the intention of the company to use proceeds from its notes to repay these advances and to use the remaining proceeds to finance future construction expenditures.

The expenditures made prior to March 31, 1928, have been reported in some detail in Application No. 14111 heretofore filed with the Com-

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mission and in Exhibit "C" attached to this petition. Those to be made during the period from April 1, 1928, to December 31, 1928, are estimated at $6,740,011 and are reported in Exhibits "D" and "E' now filed in this proceeding. Summarized they are as follows:

Production capital	$3,619,174 00
Transmission capital	380,317 00
Distribution capital	1,601,341 00
Line extensions for new consumers	962,789 00
Steam heat department	18,211 00
General capital	158,179 00
Total	$6,740,011 00

The production capital includes an estimated expenditure of $3,534,249 to complete the new San Francisco steam plant. The first unit of this plant will have an initial capacity of 35,000 kw. and will be completed, it is thought, by April, 1929.

The notes proposed to be issued constitute a new security of the company. They will be unsecured, will be dated May 1, 1928, will bear interest at the rate of 4.5 per cent per annum, will mature May 1, 1931, and will be callable at 100⅜ if redeemed on or before April 30, 1929; at 100¼ if redeemed on or before April 30, 1930, and at 100⅛ if redeemed thereafter and prior to maturity, together with accrued interest in each case. An indenture and a supplemental indenture, both dated May 1, 1928, and defining the terms and conditions under which the notes will be issued have been filed as Exhibit "I."

The $10,000,000 of notes are part of a total authorized issue of $25,000,000 of gold notes, issuable in series, the notes of any series to bear such dates of issue and rate of interest and be payable, interest and principal, at such time or times, and be callable at such prices as the board of directors may determine. The indenture provides that the company may execute a supplemental indenture or indentures mortgaging, pledging, conveying and assigning to the trustee, and to subject to the lien of the indenture any or all of its property, assets and franchises, which lien would equally secure all the authorized issue of notes, including the $10,000,000 covered by this application.

ORDER.

Great Western Power Company of California having applied to the Railroad Commission for permission to issue notes, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of the notes is reasonably required for the purposes specified herein and that the expenditures

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for such purposes are not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, that Great Western Power Company of California be and it hereby is authorized to execute and enter into an indenture and supplemental indenture substantially in the same form as those filed in this proceeding as Exhibit "I," and to issue and sell, on or before October 31, 1928, at not less than 97 per cent of their face value plus accrued interest, $10,000,000 of three-year 4½ per cent notes and to use $4,977,727.89 of the proceeds to pay indebtedness due Western Power Corporation; use $1,806,823.89 to reimburse its treasury because of earnings used to pay for additions and betterments and to use the remaining proceeds to finance in part the construction expenditures described in Exhibits "D" and "E."

The authority herein granted is subject to the following conditions:

(1) The authority herein granted to execute indentures is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said indentures as to such other legal requirements to which said indentures may be subject.

(2) Applicant shall keep such record of the issue and sale of the notes herein authorized and of the disposition of the proceeds as will enable it to file on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(3) The authority herein granted shall become effective when applicant has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $5,500.

(4) Applicant shall file with the Commission, within thirty days after execution, two certified copies of the indenture and supplemental indenture, of May 1, 1928, as finally executed.

Dated at San Francisco, California, this eighth day of June, 1928.

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DECISION No. 19871.

IN THE MATTER OF THE APPLICATION OF BENBOW POWER COMPANY FOR PERMISSION TO ISSUE ITS STOCKS AND BONDS, AND FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING IT TO SELL ELECTRIC POWER AND WATER TO THE PUBLIC IN AND OF HUMBOLDT AND MENDOCINO COUNTIES.

Application No. 14388.

Decided June 11, 1928.

CERTIFICATE—WATER AND ELECTRIC SYSTEM.—Benbow Power Company authorized to operate a water system on the property of Benbow Company, and to operate an electric system in Humboldt and Mendocino counties.

CERTIFICATES—GROUNDS FOR GRANTING OR REFUSING—POSSESSION OF FRANCHISE.—A franchise or permit from county authorities is not necessary for the purpose of certification where streets and roads within the area to be served by a water system have not been dedicated to public use.

SECURITY ISSUES—IN GENERAL.—The granting of certificates imposes no obligation on the Commission to permit applicant to capitalize, through the issuance of stocks and bonds the moneys it may expend to render public utility service.

Burtis W. Benbow, for Applicant.

BY THE COMMISSION.

OPINION.

Benbow Power Company, the applicant in this proceeding, has petitioned the Railroad Commission for a certificate of public convenience and necessity, authorizing it to operate as a public utility for the purpose of generating, distributing and selling electric power in certain parts of Humboldt and Mendocino counties and distributing and selling water in a portion of Humboldt County.

Public hearing before Examiner Satterwhite was held March 15, 1928, in the town of Garberville, at which time testimony was introduced and the matter submitted for decision.

The principal operative properties of Benbow Power Company are to be located at Benbow, Humboldt County, the site of Hotel Benbow, which is approximately three miles south of the town of Garberville on the Redwood Highway at the junction of the east branch of the south fork of the Eel River with the south fork of the Eel River. Applicant plans to immediately install a 140 horsepower Diesel plant to serve prospective consumers until such time as it can construct a dam and a hydro-electric plant approximately one-half mile westerly from Benbow on the south fork of the Eel River.

The area that applicant proposes to serve with electric energy is in both Humboldt and Mendocino counties and includes townships 4 and 5 south, range 3 east and townships 4 and 5 south, range 4 east, all Humboldt base and meridian, as designated by map marked Exhibit "A" and made a part of the application. The prospective consumers in this territory reside in the towns of Redway, Garberville and Benbow, and in several resorts located along the Redwood highway. It appears that

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there are about fifty consumers who desire annual electric service and that approximately one hundred other consumers will want seasonal service.

Applicant plans to serve water only to consumers within the confines of the property of Benbow Company, a nonutility corporation, operating Hotel Benbow and subdividing portions of its property into lots, primarily for summer homes. Except for the state highway, the streets or roads within the area to be served by the water distributing system have not been dedicated to the public use and no franchise or other permit from the county authorities is necessary for the purposes of this proceeding. Water is now supplied to Hotel Benbow from springs and Fish Creek, a tributary to the south fork of the Eel River, all on the property of the Benbow Company, and applicant proposes to install a 250,000 gallon concrete reservoir on a side hill at an elevation from which it will be possible to serve all homes in the subdivisions as well as the hotel for its various uses.

The evidence shows that no other electric utility is serving the area in question, the nearest electric utility being in the town of Weott, some thirty miles away. No one appeared in opposition to the application and the testimony makes clear that there is, and has been for some time in the past, a need for electric service in this area. Applicant was unable at this time to state what the cost of the water and electric projects would be as surveys were still under way and final plans incomplete. It appears, however, from such information as is available, that the cost will not greatly exceed $100,000.

While the title of this application indicates that applicant is asking permission to issue stock and bonds, the fact is that applicant made no such request. The testimony shows that applicant is able to finance the cost of the necessary construction work without the issue of stock or bonds at this time. While the order herein will grant to applicant the desired certificates, it should be distinctly understood that the granting of such certificates imposes no obligation on the Commission to permit applicant to capitalize through the issue of stock and bonds the moneys it may expend to render the public utility service mentioned herein. If applicant hereafter files an application for permission to issue stocks and bonds, we will then investigate the reasonableness of applicant's construction expenditures and permit the capitalization of such an amount as we deem proper.

The board of supervisors of Humboldt County, on the fourteenth day of May, 1928, granted to applicant a franchise (Ordinance No. 159), to construct, maintain and operate electric facilities in Humboldt County and, similarly, the board of supervisors of Mendocino County, on the fifteenth day of May, 1928, granted applicant a franchise (Ordinance No. 225), to construct, maintain and operate electric facilities in the

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county of Mendocino. These franchises, together with a stipulation that applicant, its successors or assigns, would never claim before the Railroad Commission or any court or public body any value for said aforesaid franchises in excess of the actual cost thereof, have been filed with the Commission.

We have carefully considered the evidence in this proceeding and are of the opinion that this application should be granted.

ORDER.

A public hearing having been held in the above entitled application, evidence having been submitted, and the Commission being fully advised:

The Railroad Commission of the State of California hereby certifies and declares that public convenience and necessity require and will require that Benbow Power Company operate a water system for the purpose of supplying water for domestic and other purposes within the confines of the property of Benbow Company, and that public convenience and necessity require and will require the exercise by Benbow Power Company of the rights and privileges of franchises granted by Ordinance No. 159 of the board of supervisors of Humboldt County and Ordinance No. 225 of the board of supervisors of Mendocino County for the purpose of operating an electric system in those areas in Humboldt and Mendocino counties described in the application.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this eleventh day of June, 1928.

DECISION No. 19874.

IN THE MATTER OF THE APPLICATION OF ALBERS BROS. MILLING COMPANY, FOR AN ORDER AUTHORIZING THE ISSUANCE AND SALE OF BONDS.

Application No. 14706.

Decided June 11, 1928.

SECURITY ISSUES—FOREIGN CORPORATION.—Application of Albers Bros Milling Company to issue bonds dismissed for want of jurisdiction, and applicant ordered to cease and desist from transacting public utility business in California.

FOREIGN CORPORATIONS.—Under section 26 of the Public Utilities Act a foreign corporation is not entitled to transact a public utility business within this state.

SECURITY ISSUES—JURISDICTION OF COMMISSION—FOREIGN CORPORATIONS.—The Commission has no jurisdiction over the issuance of securities by a foreign corporation.

BY THE COMMISSION.

ORDER.

Whereas, it appears that the applicant above named is an Oregon corporation, and as such is not entitled to transact a public utility business within this state under and by virtue of the provisions of section 26 of the Public Utilities Act;

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It is hereby ordered, that the above named and numbered application be and the same is hereby dismissed for want of jurisdiction; and

It is hereby further ordered, that Albers Bros. Milling Company be and it is hereby ordered to cease and desist forthwith from transacting any public utility business within this state.

Dated at San Francisco, California, this eleventh day of June, 1928.

DECISION No. 19888.

IN THE MATTER OF THE APPLICATION OF THE MONTEREY COUNTY WATER WORKS FOR AN INCREASE IN RATES.

Application No. 13212.

Decided June 13, 1928.

RATES—WATER UTILITY.—Application of Monterey County Water Works to increase rates in Monterey, Pacific Grove, and Carmel denied.

RETURN—REASONABLENESS—OVERBUILDING AND DUPLICATION.—Remaining water consumers should not be required to pay a return upon overbuilt facilities given outright to the utility, and installed in territory practically undeveloped from which negligibly small revenues are received.

VALUATION—PARTICULAR TANGIBLES—NONOPERATIVE PROPERTY.—The cost of a diversion dam rendered nonoperative and no longer necessary in rendering service should be excluded from operative capital.

VALUATION—PARTICULAR TANGIBLES—IN GENERAL.—A sum alleged to be the reasonable value of the use of a dam and storage facilities, together with operating costs for a period prior to the acquisition of an actual interest in said properties, does not represent any value in existing fixed capital property and can not properly be included in a rate base.

VALUATION—PARTICULAR INTANGIBLES—GOING VALUE.—An arbitrary and unsupported assumption that a utility's water rights and going value together are equivalent to ten per cent of the value of physical properties is insufficient evidence upon which to base an allowance for going value.

Orrick, Palmer and Dahlquist, by *T. W. Dahlquist*, for Applicant.
Argyll Campbell, City Attorney, and *W. G. Hudson*, Mayor, of the City of Monterey, for the City of Monterey, and *Argyll Campbell*, for the City of Carmel, Protestants.
H. G. Jorgensen, City Attorney, for the City of Pacific Grove, Protestant.
C. M. Brown, for the Monterey Sardine Canneries Association, Protestant.
Perry Newberry, in propria persona, Protestant.
A. G. Metz, in propria persona, Protestant.
Edward Robling, in propria persona, Protestant.

LOUTTIT, *Commissioner*.

OPINION.

In this proceeding, The Monterey County Water Works, a corporation, engaged in the business of storing and distributing water to the inhabitants of the cities of Monterey, Pacific Grove and Carmel and to the unincorporated territory in the vicinity, in Monterey County, asks the Railroad Commission for authority to increase its rates.

The application alleges in effect that the company has recently acquired, at a cost of $328,043, a 65 per cent interest in certain water-producing and transmission properties heretofore owned by Del Monte Properties Company, a corporation; that the fair value of all its property devoted

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to public use as of May 31, 1926, was at least $1,500,000; that the revenues received during the twelve-months' period ending May 31, 1926, resulted in a net return of 4.76 per cent upon the said sum of $1,500,000, which return is alleged to be inadequate and less than the amount applicant is entitled to receive. It is further alleged that applicant will be required to install additional facilities in order that adequate service may be rendered to its consumers and this expenditure will increase the investment in physical property. The Commission therefore is requested to authorize an increased schedule of rates.

Public hearings in this proceeding were held at Monterey.

The rates at present in effect were established by this Commission in its Decision No. 5997, dated December 21, 1918 (16 C. R. C. 293), and are as follows:

Monthly Minimum Payments.

½-inch and ¾-inch services	$1 10
1-inch services	1 50
1½-inch services	2 25
2-inch services	3 00
3-inch services	4 00

Monthly meter rates.

First 300 cubic feet, or less	$1 10
Next 700 cubic feet, per 100 cubic feet	30
Over 1,000 cubic feet, per 100 cubic feet	25

Public use.

Fire service, per month per hydrant	$3 00
For sprinkling streets and roads, per 100 cubic feet	25
Other use at meter rates.	

Presidio at Monterey.

(Rates as per contract with United States Government.)

For water delivered by gravity	$0.17	per 1000 gallons
For water delivered into reservoir	.27½	per 1000 gallons

This company has appeared before this Commission in other proceedings and reference is made to the following decisions for a more detailed description of the system, its history and method of operation:

Decision No.	*Date*	*Citation*	*Nature of proceeding*
1855	Oct. 8, 1914	5 C. R. C. 530	Rates
3059	Jan. 25, 1916	9 C. R. C. 91	Transfer
5997	Dec. 21, 1918	16 C. R. C. 293	Rates
14193	Oct. 23, 1924	25 C. R. C. 942	Stocks
16450	April 9, 1926	28 C. R. C. 11	Bonds

Water is obtained from the Carmel River by diversion at San Clemente Dam, which also provides for storage of approximately 2000 acre-feet of water. Transmission mains, varying from thirty to twelve inches in diameter, convey the water from the diversion point to Forest Lake Reservoir, located on the highland near Pacific Grove. The distribution system consists of 603,114 lineal feet of mains, ranging from sixteen to one inch in diameter. There are about 6067 services, practically all of which are metered.

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The water company owns a 65/100 interest in the water rights on the Carmel River, San Clemente Dam and the thirty and eighteen-inch portions of the transmission main, the remainder of these properties being owned by the Del Monte Properties Company, which owns all of the stock of the water company and also owns and operates an independent transmission and distribution system serving certain of its own properties, including the Del Monte Hotel.

Estimates of the historical cost of applicant's properties and also the cost of reproduction new less accrued depreciation were submitted by engineers for the applicant and the Commission. In the estimates based upon historical cost, the lands were appraised at the present fair market value. A summary of this evidence is set out in the following table:

	Organization	*Water rights*	*Land*	*Physical property*	*Total*
Original cost:					
Company's engineers	$8,000	$92,500	$111,843	$1,511,469	$1,723,812
Commission's engineers	5,000	34,580	*96,762	1,431,342	1,567,684
Reproduction cost:					
Company's engineers	8,000	92,500	172,309	2,084,121	2,356,930
Commission's engineers	8,000	34,580	91,061	1,893,007	2,026,648
Reproduction cost less depreciation:					
Company's engineers	8,000	92,500	172,309	1,749,304	2,022,113
Commission's engineers—					
Inspection	8,000	34,580	91,061	1,394,586	1,528,227
5% sinking fund	8,000	34,580	91,061	1,583,681	1,717,322

*Includes $5,701 as portion of $61,458 interest and maintenance charge allocated to lands.

The evidence also shows that the following items should be deducted from the above estimates of historical cost and reproduction cost for the purpose of arriving at a reasonable rate base for the purpose of this proceeding:

	Original cost	*Reproduction cost*
Overbuilt facilities	$88,600 00	$88,600 00
Carmel Dam	13,325 00	25,739 00
San Clemente Dam charges for 4.2 years	61,458 00	-------
Miscellaneous pumping equipment	1,329 00	-------
Total deductions	$164,712 00	$114,339 00

The overbuilt facilities include a complete distribution system installed to serve the Peninsula Country Club property. This distribution system was given outright to the company but practically the only service performed by it at present is the supplying of a golf and country club project and an adjoining subdivided area owned and now being developed by the Del Monte Properties Company. There is also included under this item certain consumers' advances covering extensions to serve tracts and projects only recently subdivided and very sparsely inhabited or built-up. These overbuilt facilities do not represent any present actual

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cost to the company. It would be unfair to require the remaining consumers on the system to pay a return upon these overbuilt facilities installed in territory as yet practically undeveloped and from which negligibly small revenues are being received.

The Carmel Diversion Dam was rendered nonoperative through the installation of San Clemente Dam and the installation of a pipe line connecting the dam with the transmission main at Carmel Dam. In view of the fact that the existence of this structure under present operating conditions adds nothing to the value of the system and is no longer necessary in the rendition of public utility service, the cost thereof should be excluded from operative capital.

In connection with the San Clemente Dam and Reservoir, the company claims, in addition to the actual cost of its present interest therein, the sum of $61,458, which it alleges to be the reasonable value of the use of said dam and storage facilities, together with the operating costs therewith for a period of 4.2 years in the past, prior to acquisition of an actual interest in said properties. However, such a charge does not represent any value in existing fixed capital property and can not be properly included in the rate base. Considering the reservoir lands at present market value, the sum of $204,602 is hereby found to be the fair value of the company's interest in said dam and reservoir lands for the purposes of this proceeding and is included in the rate base hereinafter determined.

The miscellaneous pumping equipment was shown to be nonoperative and therefore will be excluded from operative property.

The company makes a claim for $100,000 for going value. This amount has not been included in the rate base herein. The only evidence introduced by applicant in this regard showed merely an arbitrary and unsupported assumption that the utility's water rights and going value together were equivalent to ten per cent of the value of the physical properties, resulting in $100,000 being allocated to going value. This is unquestionably insufficient evidence to permit with any reasonable degree of certainty the establishment of any amount for this intangible element.

The figures above stated do not include any allowance for material and supplies or for working capital, and the evidence justified the conclusion that there should be properly included the sums of $26,909 and $12,000 for these items, respectively.

Consideration of the evidence, both oral and documentary, presented in this proceeding and due weight being given to all of the various appraisements of physical and intangible elements of property value submitted herein, together with a study of the many local circumstances and conditions affecting said values, leads to the conclusion that the sum of $1,442,000 is a fair and reasonable rate base chargeable against the present consumers of this water system.

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Somewhat conflicting figures of revenues and expenses were presented, a study of which indicates that the financial results of operation for the year 1926 may be fairly stated as follows:

Operating revenue	$177,830 (a)
Operating expense	82,881 (a)
(Including $13,881 for depreciation computed on 5% sinking fund basis.)	
Net income	$94,949 (a)
Return on rate base of $1,442,000	6.58%

The evidence clearly shows that the cities and communities served are all in a prosperous and flourishing condition and all indications point to a continuation of the past residential and industrial growth and progress.

That applicant is sharing in the prosperity of this community it serves is shown by the following tabulation of growth in business for the past ten years:

Year	*Number of consumers*	*Operating revenues*
1916	3,722	$76,069
1917	3,846	77,383
1918	3,926	79,751
1919	4,064	99,423
1920	4,218	*113,635
1921	4,435	109,753
1922	4,658	114,133
1923	4,881	130,404
1924	5,165	147,229
1925	5,529	155,864
1926	6,067	177,830

*Rates increased—Decision No. 5997, dated December 21, 1918.

After full consideration of all the evidence submitted in this matter relating to value, operating methods and requirements, the area supplied and the various types of service provided and the many other elements involved in this proceeding, I am of the opinion that applicant is now enjoying, under its existing schedule of rates, a fair and reasonable return upon the fair value of its property, reasonably necessary and useful in fulfilling its public utility duties and obligations, and that said rate of return should be materially increased in the immediate future by reason of the normal growth of the territory served. The application herein therefore should be denied.

The following order is recommended:

ORDER.

The Monterey County Water Works, a corporation, having applied to the Railroad Commission for authority to increase its rates, public hearings having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

It is hereby ordered, that the above entitled proceeding be and is hereby denied.

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The effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirteenth day of June, 1928.

DECISION NO. 19890.

CALIFORNIA CATTLEMEN'S ASSOCIATION, CALIFORNIA WOOL GROWERS' ASSOCIATION

vs.

MINARETS AND WESTERN RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY.

Case No. 2494.

Decided June 13, 1928.

RATES—RAILROAD—LIVE STOCK.—Complaint alleging live stock rates to be unreasonable dismissed.

RATES—REASONABLENESS—COMPARISONS—NECESSITY OF SIMILARITY.—Although compared rates yield lower revenue per car mile, when no information is vouchsafed as to the comparative conditions under which the respective services are rendered, it is necessary to review the earnings yielded under the rates assailed in the light of circumstances under which the traffic moves.

RATES—REASONABLENESS—COMPARISONS—NECESSITY OF SIMILARITY.—The exceptional situation and circumstances of a weak line operating at a loss make rate comparisons per mile with movements over standard trunk lines in other sections wholly out of the question (*Cotton Mills Products Co.* vs. *A. & V.*, 120 I. C. C. 473).

John Curry, for Complainants.
C. S. Thomas, for Minarets and Western Railway Company, Defendant.
F. W. Mielke and *J. L. Fielding*, for Southern Pacific Company, Defendant.
E. G. Wilcox, for Oakland Chamber of Commerce.
Edson Abel, for California Farm Bureau Federation.

BY THE COMMISSION.

OPINION.

Complainants are the California Cattlemen's Association and California Wool Growers' Association, unincorporated voluntary organizations rendering service to cattlemen and sheepmen. In this proceeding, filed February 3, 1928, they allege that the rates on cattle and sheep, carload, from North Fork to San Francisco, Oakland, San Jose, Swanston and Los Angeles are unreasonable, unjustly discriminatory and unduly prejudicial to the extent they exceed rates for similar distances between other points in California.

We are asked to prescribe just and reasonable rates for the future. Rates are stated in amounts per 36-foot car.

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A public hearing was held before Examiner Geary at San Francisco May 10, 1928, and the case having been duly submitted is now ready for an opinion and order.

North Fork is on the Minarets and Western Railway Company, hereinafter referred to as the Western, 34 miles from Friant, the junction point with the Southern Pacific Company, hereinafter referred to as the Southern Pacific. Friant is on the Clovis branch of the Southern Pacific 25 miles north of Fresno and 219 miles from San Francisco.

In support of the allegation of unreasonableness the complainants compare the rates assailed with the mileage rates on like traffic for similar distances between Arizona and California and between Nevada and California. They also cite specific rates on live stock from Klamath Falls and Lakeview, Oregon; Alturas, Millux, Maricopa, South Fork and Scotia, California, to Oakland, and certain other interstate rates to Los Angeles. Although the compared rates yield lower revenue per car mile than those from North Fork to the same destinations no information whatever is vouchsafed as to the comparative conditions under which the respective services are rendered. In default of more persuasive or convincing proof of the unreasonableness of the rates assailed it is necessary to review the earnings yielded by this traffic in the light of circumstances disclosed of record under which the traffic moves, particularly with respect to operating conditions, revenues and expenses of the Western, as the complaint was directed principally against that carrier.

The Western traverses a mountainous territory, with a severe grade for practically its entire length. The maximum grade against the haul encountered in the run from Friant to North Fork is 2.5 per cent, which prevails for more than 50 per cent of the distance. Due to this situation it is necessary to handle small trains. The average trains moving to North Fork consist of only 35 empty cars and approximately the same number of loaded cars per train are handled in the reverse direction. The road was constructed primarily for the purpose of transporting lumber and the records show that 96.4 per cent of its carload traffic from July, 1923, to December 21, 1927, consisted of forest products. During the same period its live stock traffic was slightly less than 3/10 of 1 per cent of the total carload freight carried. The annual reports on file with this Commission show that the Western has failed to earn its fixed charges, depreciation, operating and other expenses any year since operations were commenced in July, 1923, the total deficit as of December 31, 1927, being $141,121.94. Its exceptional situation and exceptional circumstances make rate comparisons per mile with the movement of live stock over standard trunk lines in Arizona, Nevada, New Mexico and other sections of California wholly out of the question.

The rates in effect on live stock, carload, from North Fork are the combination rates based on Friant, representative of which are:

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To	Miles	Cattle	Sheep S. D. cars
San Francisco	253	$107 00	$88 50
Oakland	249	102 00	88 50
Los Angeles	335	126 00	103 50

These rates yield car-mile revenues ranging from 37.6 cents to 42.3 cents on cattle and 30.9 cents to 35.6 cents on sheep. Defendants contend that the assailed rates are not unreasonable and show by exhibits introduced at the hearing rates on live stock from points on certain short line railroads to San Francisco and Sacramento, also the differentials in rates from points on the short lines over those from the interchange points. Certain of the rates cited on cattle are: From Minden, Nevada, to Sacramento 196 miles $93, to Stockton 243 miles $100, to San Francisco 346 miles $130.50; from Bartle to Sacramento 280 miles $115.50 and to San Francisco 346 miles $130.50. These rates yield revenue ranging from 37.7 cents to 47.4 cents per car mile. The records show that the differential in rates of the short lines over those from the interchange point with the Southern Pacific are not materially different from the rates from North Fork to Friant, distance considered. Defendants also cite rates on lumber, carload, from Pinedale on the Western to various points in California yielding higher revenue per car mile than those assailed.

The matter of rates from points on short or weak lines has been considered by the Interstate Commerce Commission in many cases. In *Cotton Mills Products Co.* vs. *A. & V.* (120 I. C. C. 473), the Commission found that the sixth class rate of 75½ cents per 100 pounds was not unreasonable as compared with the rate of 56 cents per 100 pounds for similar distances prescribed in Southern Class Rate Investigation (100 I. C. C. 513). The Federal Commission said that the Birmingham and Southeastern Railway was a weak line, therefore entitled to special rate treatment.

No evidence was submitted with respect to the allegations of unjust discrimination or undue prejudice.

After a careful consideration of the testimony and exhibits we are of the opinion and find that the rates assailed are not unreasonable, unjustly discriminatory or unduly prejudicial. The complaint will be dismissed.

ORDER.

This case being at issue upon complaint and answers on file, having been duly heard and submitted by the parties involved, full investigation of the matters and things having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof;

It is hereby ordered, that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this thirteenth day of June, 1928.

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DECISION No. 19892.

IN THE MATTER OF THE APPLICATION OF WEST SIDE TRANSIT CO., A CORPORATION, FOR A CERTIFICATE AUTHORIZING APPLICANT TO EXCHANGE TRANSFERS WITH THE B. & H. TRANSPORTATION COMPANY, A CORPORATION, AND LANG TRANSPORTATION COMPANY, A COPARTNERSHIP, CONSISTING OF MIKE LANG, HOWARD M. LANG AND GENE LANG; SAID TRANSFERS TO BE EXCHANGED ONLY FROM SAID LINES WITHIN THE CORPORATE LIMITS OF THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

Application No. 14523.
Decided June 13, 1928.

RATES—MOTOR BUS—JOINT RATES.—**West Side Transit Company, B. & H. Transportation Company and Lang Transportation Company authorized to establish a joint one-way passenger fare of seven cents in Long Beach.**

M. M. Todd, for West Side Transit Company, Applicant.
Bruce Mason and *D. P. Bush*, for B. & H. Transportation Company and Lang Transportation Company.
J. K. Hull, Deputy District Attorney, *S. C. Dalton* and *C. A. Bland*, for Long Beach Chamber of Commerce.

BY THE COMMISSION.

OPINION.

This is an application filed by the West Side Transit Company, a corporation, for authority to establish a joint passenger fare of seven cents with the B. & H. Transportation Company, a corporation, and the Lang Transportation Company, a copartnership, between points located on the motor bus routes of the three interested parties within the corporate limits of the city of Long Beach.

A public hearing was held before Examiner Geary at Long Beach on June 7, 1928, and the matter having been submitted is now ready for an opinion and order.

The West Side Transit Company operates an interurban motor bus service between Long Beach and Los Angeles, serving Watson, Davidson City, Torrance, Moneta, Western City and Manchester avenue, the latter point being within the city of Los Angeles. In passing through Long Beach a local service is rendered on what is known as the Daisy avenue and Perris road lines.

The B. & H. Transportation Company, a corporation, and the Lang Transportation Company, a copartnership (both lines being controlled by the same interests), are serving the east side districts of the city of Long Beach, while the West Side Transit Company renders service in the west side of the city. That district served by the Lang interests is primarily residential, while the district served by the West Side Transit Company is in a large degree made up of factories and industrial plants. There is a continual flow of passengers from one side of the city to the other, especially among the employees of the factories who are living on the east side of the city and working on the west side.

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Under the present permit arrangement with the city of Long Beach the companies controlled by the Lang copartnership have two bases of fares, 5 cents on the B. & H. and 7 cents on the Lang Transportation Company, and in transferring from these lines to the West Side Transit Company passengers must, under the fares now in effect, pay as a through charge 10 cents when originating within the confines of one territory and 12 cents when within the other. It was shown by the testimony of witnesses that during a test period there have been approximately 200 passengers in each direction, or a total of 400 per day, who now, under the present tariffs, are required to pay the combination of local fares.

Witnesses for the applicant testified that there has been a continual demand for this seven-cent transfer ticket, that the through transportation is a public convenience and necessity and would be a decided advantage to the traveling public. The proposed fare is recommended by resolutions of the city council and the Long Beach chamber of commerce. There were no appearances in opposition to the granting of the application.

It is further urged that the discontinuance of the rail services of the Pacific Electric Railway Company and the abandonment of its tracks on the Magnolia avenue route authorized by our Decision No. 19843, Application No. 14691, May 29, 1928, and effective June 24, will make this seven-cent fare of greater necessity to the people of Long Beach.

Upon consideration of all the facts of record we are of the opinion and find that public convenience and necessity require the establishment of a through route and the publication of a joint fare of seven cents between these three motor bus services. The application should be granted.

ORDER.

A public hearing having been held in the above entitled proceeding, evidence having been submitted by the applicants, and the Commission being fully advised:

The Railroad Commission of the State of California hereby declares that there is a necessity for the publication of a joint one-way passenger fare of seven cents between points located on the motor bus route of the West Side Transit Company and points located on the motor bus routes of the B. & H. Transportation Company, a corporation, and the Lang Transportation Company, a copartnership, all points being within the corporate limits of the city of Long Beach.

It is hereby ordered, that applicant, West Side Transit Company, be and it is hereby authorized to publish and file a joint tariff setting forth the fare of seven cents to be assessed over the through route within the city of Long Beach.

Dated at San Francisco, California, this thirteenth day of June, 1928.

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DECISION No. 19893.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AUTHORITY TO ESTABLISH CERTAIN RULES COVERING NONINTERMEDIATE APPLICATION OF RATES APPLYING TO MILLING IN TRANSIT OF GRAIN.

Application No. 14351.
Decided June 13, 1928.

RATES—RAILROAD.—Southern Pacific Company authorized to amend tariff rules covering nonintermediate application of rates applying to milling in transit of grain.

F. W. Mielke and *W. S. Dawson*, for Applicant.
R. P. McCarthy, for Globe Grain and Milling Company.
C. R. Schulz, for San Francisco Milling Company, Consolidated Milling Company, and H. Pini Company.
E. B. Smith, for Sperry Flour Company.
Charles S. Connolly, for Albers Bros. Milling Company.
C. A. Teutschel, for Sacramento Chamber of Commerce.

BY THE COMMISSION.

OPINION.

This is an application filed by the Southern Pacific Company January 19, 1928, and amended March 29, 1928, seeking authority under the provisions of section 24 (*a*) of the Public Utilities Act of the State of California for permission to amend note 2 of paragraph "A" item 1390 and paragraph F of item 1400 of its Terminal Tariff No. 230-J, C. R. C. 3183, by adding the following provision:

> This rule causes higher per car charges on like shipments originating at and/or destined points intermediate from and/or to more distant points, which carry other authorized routes. This departure from section 24 (*a*) of the Public Utilities Act is authorized by authority of the Railroad Commission of the State of California * * *

The items sought to be amended relate to milling in transit on grain and grain products and are as follows:

> Item 1390.
>
> Section No. 3—Points of origin, transit points and points of destination.
>
> A. Transit points. Milling, cleaning, storing or otherwise treating in transit points must be directly intermediate, between points of origin and final destination, except as otherwise specifically provided in paragraph E of this section and paragraphs F, G and H, section No. 4, item No. 1400 series. (See Notes 1 and 2.)
>
> Note 1. No back or out-of-line haul will be permitted, except as otherwise specifically provided in paragraph E of this section and paragraphs F and H, section No. 4, item No. 1400 series.
>
> Note 2. The milling, cleaning, storing or otherwise treating in transit point will be considered as intermediate between point of origin and final destination, provided it is intermediate via any authorized route.
>
> Item 1400, paragraph F.
>
> Through rate on out of line, indirect or back haul shipments. The highest rate in the movement, that is:
>
> Origin to transit point, or origin to destination, or transit point to destination in effect in tariffs lawfully on file with the Interstate Commerce Commission and/or respective State Commissions on date shipment leaves point of origin as shown on the freight bills surrendered, will apply when transit point is not directly intermediate from point of origin of the inbound commodity to final destination of the outbound product and in addition thereto

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out of line, indirect or back haul charges as shown herein will be assessed for such service.

The charge for the out-of-line, indirect or back haul shipments will be based upon the additional distance traversed in movement to and from transit point as against direct short line mileage or mileage via routes in which Southern Pacific Company (Pacific Lines) participates from point of origin of inbound commodity to final destination of the outbound product.

Item 1400 also contains a scale of rates for out-of-line, indirect or back haul charges ranging from 2 cents per 100 pounds for distances not exceeding 45 miles to 6 cents per 100 pounds for distances over 100 miles and not over 125 miles.

A public hearing was held at San Francisco before Examiner Geary April 12, 1928, and the proceeding is now ready for an opinion and order.

The applicant avers the tariff provisions sought to be established are not for the purpose of increasing any rates or charges but are for clarification, because as now published they can be interpreted to permit transit at points via the line of applicant intermediate between the points where the milling in transit has been established, to meet the rates of a competing route as set forth in note 2 to item 1390. For illustrative purposes the through joint rate on grain from Sacramento to Santa Rosa is 12 cents per 100 pounds. This rate is applicable over the Southern Pacific to Shellville Junction, thence Northwestern Pacific, and the direct short line to Santa Rosa of 108 miles. The distance between these same points via San Francisco is 206 miles, or 98 miles longer than via the direct route. On grain moving from Sacramento, milled in transit at San Francisco, and the transitted product subsequently reshipped to Santa Rosa, no out-of-line charge is assessed for the reason that there is a rate of the same volume applicable on like traffic moving over the Western Pacific to San Francisco, thence Petaluma and Santa Rosa Railway to destination. On grain from Davis, a point not served by a carrier other than the Southern Pacific, the same competitive conditions do not exist, therefore on traffic from that point milled in transit at San Francisco, an out-of-line charge is assessed for the additional distance hauled. Similar situations exist in other sections of the state.

With respect to item 1400, the out-of-line or back haul charges are absorbed on certain shipments milled in transit when the distance via the transit point is less than via another authorized route of the applicant between the same points. On shipments originating at or destined to points intermediate the out-of-line or back haul charge is not absorbed under the present tariff, due to the fact that no other authorized route is available from or to such intermediate points. An illustration is in the movement of grain from Sacramento to Gilroy milled in transit at San Francisco, where the direct short line distance from point of

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origin to final destination via Port Costa and Niles is 154 miles, and the distance via the transit point is 165 miles. The other authorized route is via Sacramento, Martinez, Newark and Niles, involving a haul of 211 miles, or 46 miles greater than the short line distance via San Francisco, consequently there is no out-of-line charge assessed for the transit movement to and from San Francisco. Elk Grove is located between Sacramento and Stockton, and the only authorized route from that point to Gilroy is through Stockton and Niles, therefore on grain milled in transit at San Francisco there is an out-of-line charge for the additional distance to San Francisco and return to Niles, as provided for in the scale of rates published in item 1400. Applicant contends the lower rates and charges at the more distant points are justified because of the competitive conditions existing at those points which do not exist at the intermediate points.

Protestants presented no testimony or exhibits in opposition to the proposed publication, but in their cross-examination of witnesses and in the arguments contended that the out-of-line and back haul charges moving from or to certain intermediate points were not always assessed because of different tariff interpretations.

The out-of-line and back haul rate privileges are established primarily to enable all milling companies at common points to secure shipments of grain which ordinarily would move into mills directly intermediate between points of origin and final destination, and the influences surrounding the absorption of back haul or out-of-line charges are competitive, springing from the ability of other carriers under circumstances that do not necessitate either back haul or out-of-line services to transport the grains into designated transit stations at the through rate without additional charges. Competing carriers, because of the physical disabilities of the routing via their lines, can give the same character of service only by performing back haul or out-of-line service, and hence must either meet the competition by the performance of the service without an extra charge, or publish a charge for it and thus discourage the tonnage moving over their own rails. The instant application is purely for the purpose of permitting the meeting of competition at the key points without disturbing normal rates at points in territory where the competing influences are not controlling, and it is the intention of this application to protect any violations of the long and short haul provisions of the state constitution and section 24 of the Public Utilities Act. At the present time it is most difficult to interpret the rules, and the proposed provisions will have the effect of clarifying the tariffs.

After giving careful consideration to all the facts of record, we are of the opinion and find that the application has been justified and that

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applicant should be authorized to amend item 1390 and item 1400 of Southern Pacific Company Tariff 230-J, C. R. C. 3183, by adding the rule as set forth in the application.

ORDER.

This application having been submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order;

It is hereby ordered, that applicant, Southern Pacific Company, be and it is hereby authorized to amend item 1390 and item 1400 of its Tariff 230-J, C. R. C. 3183, by adding the provision as specifically set forth in the application.

Dated at San Francisco, California, this thirteenth day of June, 1928.

DECISION No. 19894.

IN THE MATTER OF THE APPLICATION OF PARR TERMINAL COMPANY AND PARR TERMINAL CORPORATION FOR AN ORDER AUTHORIZING THE TRANSFER OF CERTAIN PROPERTY FROM PARR TERMINAL COMPANY TO PARR TERMINAL CORPORATION, THE ISSUANCE BY PARR TERMINAL CORPORATION OF CERTAIN SHARES OF ITS CAPITAL STOCK TO PARR TERMINAL COMPANY AND THE ASSUMPTION BY PARR TERMINAL CORPORATION OF CERTAIN LIABILITIES OF PARR TERMINAL COMPANY.

Application No. 14562.

IN THE MATTER OF THE APPLICATION OF PARR TERMINAL CORPORATION FOR AN ORDER AUTHORIZING THE CREATION OF BONDED INDEBTEDNESS IN THE SUM OF FOUR HUNDRED THOUSAND DOLLARS AND ISSUANCE AND SALE OF BONDS IN THE SUM OF FOUR HUNDRED THOUSAND DOLLARS.

Application No. 14721.

Decided June 13, 1928.

SECURITY ISSUES—STOCK—BONDS.—Parr-Richmond Terminal Corporation authorized to issue and sell at not less than par $225,000 of stock and $300,000 of first mortgage fifteen-year 6 per cent bonds at not less than 94 per cent of face value, plus accrued interest.

SECURITY ISSUES—REDEMPTION.—In fairness to bondholders a company should not be permitted to redeem its bonds on the first day of any calendar month, but redemption of bonds should occur only on the dates when the semiannual interest is due and payable.

Morrison, Hohfeld, Foerster, Shuman and Clark, by *R. C. Foerster* and *W. L. Holloway*, for Applicants.

BY THE COMMISSION.

OPINION.

In Application No. 14562 the Railroad Commission is asked to authorize Parr-Richmond Terminal Corporation (formerly Parr Terminal Corporation), among other things, to issue $250,000 of common capital stock.

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In Application No. 14721 the Commission is asked to authorize the company to execute a mortgage and to issue and sell, at 91 per cent of face value, $400,000 of first mortgage 6½ per cent fifteen-year bonds, and to issue such additional shares of common stock (not exceeding $210,400 par value) as the Commission may deem proper.

The Commission heretofore, by Decision No. 19707, dated May 3, 1928, in Application No. 14562, made its preliminary order authorizing the company to issue $26,100 of the $250,000 of stock applied for therein, of which $1,100 was to be issued to its directors for cash and $25,000 was to be issued in part payment for certain properties hereinafter referred to. It had developed, in connection with that application, that the company proposed filing a petition for permission to issue bonds and the Commission concluded that the issue of additional stock should be considered with the bond application. Thereafter, on May 22, 1928, the company filed Application No. 14721 for permission to issue bonds and stock in the amounts set forth above.

Parr Terminal Corporation was organized under the laws of the State of California on or about July 12, 1927, with an authorized capital stock of $500,000, divided into 5000 shares of the par value of $100 each, all common. On May 28, 1928, by a decree of the superior court in and for the city and county of San Francisco the name of the corporation was changed to Parr-Richmond Terminal Corporation.

Parr-Richmond Terminal Corporation is engaged in the business of a warehouseman and wharfinger and in the buying, selling and leasing of industrial lands in and about the city of Richmond. The company has secured a lease from the city of Richmond for a period of fifty years of certain city lands known as the outer and inner harbor of the city of Richmond, together with that certain wharf and warehouse known as "Municipal Wharf No. 1." A copy of the lease is filed in Application No. 14562 as Exhibit "C."

Applicant asks permission to issue and sell at 91 per cent of their face value and accrued interest $400,000 of 6½ per cent fifteen-year first mortgage bonds due June 1, 1943, and use the proceeds for the following purposes:

To construct and equip the warehouse and wharf	$250,000 00
To purchase certain real property from Richmond Belt Railway Company	3,204 35
To pay outstanding and existing indebtedness to American Trust Company	39,750 00
To pay outstanding and existing indebtedness to Rozella R. B. Gilmore	23,241 00
To pay outstanding and existing indebtedness to Mechanic's Bank	16,000 00
To impound the first year's interest requirements	26,000 00
To pay existing current indebtedness and expenses of the proposed bond issue	5,804 65
Total	$364,000 00

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The wharf and warehouse which applicant proposes to construct will adjoin a wharf and warehouse to be constructed by the city of Richmond. The city's wharf and warehouse will be operated by applicant under its lease from the city of Richmond. Contracts have been entered into for the construction of the improvements.

Applicant has an option to purchase some 11.514 acres of land from the Richmond Belt Railway Company for $3,204.35. It intends to exercise this option. It is recited in Application No. 14721 that there is now due on the purchase of approximately ninety-one acres of land the sum of $62,991, which it is proposed to pay off through the use of bond proceeds. Sixteen thousand dollars of the bond proceeds are to be used to pay indebtedness due the Mechanics Bank and $5,804.65 to pay other current indebtedness and expenses of the bond issue. It is proposed to impound $26,000 of the bond proceeds to pay one year's interest on the bond issue.

It appears that applicant receives one-half of the net profits from the operations of the city's existing wharf and warehouse facilities. Such profits during 1927 are reported at $19,234.33, while for 1928 they are estimated at $26,293.63. These figures include no return from the new wharf and warehouse facilities.

Applicant has, through Walter S. Reis of E. B. Field and Company, submitted evidence to show that if certain contemplated improvements are installed, its real estate will have a value of $477,804. He refrained, however, to express any opinion as to what is the present value of the land.

Applicant asks permission to execute a closed mortgage or trust indenture to secure the payment of the $400,000 of bonds. This instrument is to contain a sinking fund provision and release clauses which are intended to provide sufficient money so that all of the bonds may be redeemed on or before maturity. Under the provision of the indenture the company reserves the option to redeem the bonds on the first day of any month prior to the date of maturity at 103 per cent of the principal and accrued interest during the first five years after date of issuance, and thereafter at a premium of one-fourth of one per cent per annum and accrued interest, during the unexpired term of the bond. We assume that the bonds will be given a general distribution. It occurs to us that in fairness to the bondholders the company should not be permitted to redeem its bonds on the first day of any calendar month. The redemption of the bonds should occur only on the dates when the semi-annual interest is due and payable.

Our analysis of the evidence indicates that if this application were granted, as prayed for, the stockholders of applicant would have invested in the enterprise approximately $48,000. The balance of the cash, about $364,000, necessary to construct the project would be

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secured from the holders of $400,000 of bonds, who have no voice in the management of the properties. While the evidence indicates that the value of the properties exceeds the past and proposed cash expenditures, we do not believe that it is in the public interest to authorize a $400,000 bond issue to be sold at 91 or on an effective interest rate of 7½ per cent, assuming the bonds were all to remain outstanding to maturity. But, it is not contemplated that the bonds will remain outstanding until maturity. Their earlier payment will increase the effective interest rate which may run as high as 9 per cent.

We believe that the stockholders of this enterprise should provide more of the necessary cash than is proposed herein and that applicant should not issue more than $300,000 of 6 per cent fifteen-year bonds to be sold for not less than 94 per cent of their face value and accrued interest. Such a bond issue will provide applicant with $282,000 of cash. Any additional cash that may be needed should be provided by the stockholders. To pay in part for the real properties referred to in these proceedings and provide part of the cash necessary to construct the wharf and warehouse and pay indebtedness, the order herein will authorize the issue of $225,400 of stock in addition to the $26,100 of stock authorized by Decision No. 19707 dated May 3, 1927.

While reference has herein been made to the company's proposed mortgage, such reference should not be construed as an approval of any of the provisions of such instrument. Applicant will be required to submit a revised copy of its proposed mortgage or trust indenture.

FIRST SUPPLEMENTAL ORDER IN APPLICATION No. 14562.
ORDER IN APPLICATION No. 14721.

Applications having been made to the Railroad Commission for authority to issue stock and bonds as set forth in the foregoing opinion, public hearings having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of $300,000 of 6 per cent bonds and $225,400 of common stock, in addition to the $26,100 of stock heretofore authorized by Decision No. 19707, dated May 3, 1928, is reasonably required for the purposes specified herein and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expense or to income;

It is hereby ordered, as follows:

1. Parr-Richmond Terminal Corporation may issue to its directors an additional four shares of stock at par, for cash, and use the proceeds to pay organization expenses.

2. Parr-Richmond Terminal Corporation may issue and sell on and after the effective date of this order and prior to September 1, 1928, not exceeding $300,000 of first mortgage fifteen-year bonds, provided

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that such bonds bear interest at not exceeding 6 per cent per annum and are sold by the corporation at not less than 94 per cent of face value plus accrued interest, and may use the proceeds to finance in part the cost of constructing the proposed new warehouse and wharf, of acquiring the land from Richmond Belt Railway Company and pay the indebtedness, all as referred to in the foregoing opinion.

3. Parr-Richmond Terminal Corporation may issue, at not less than par, on or before September 1, 1928, $225,000 of stock, in addition to the stock heretofore authorized to be issued by Decision No. 19707, dated May 3, 1928, to pay in part the cost of the real property and lease referred to in the foregoing opinion and of constructing or acquiring the properties mentioned in paragraph "2" above and of paying the present outstanding indebtedness.

4. The authority herein granted is subject to the following conditions:

(a) Parr-Richmond Terminal Corporation shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized, and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(b) The authority herein granted will become effective when Parr-Richmond Terminal Corporation has paid the fee prescribed by section 57 of the Public Utilities Act, which fee is $235, and when the Commission has authorized said company to execute a mortgage or trust indenture to secure the payment of the $300,000 of bonds.

Dated at San Francisco, California, this thirteenth day of June, 1928.

DECISION No. 19902.

IN THE MATTER OF THE APPLICATION OF OSCAR SCHNEIDER, WALTER SCHNEIDER AND FRANK SCHNEIDER, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SCHNEIDER BROS., FOR AN ORDER AUTHORIZING THEM TO ISSUE NOTES AND DEED OF TRUST ON CERTAIN OF THEIR PROPERTY.

Application No. 14747.

Decided June 20, 1928.

SECURITY ISSUES—NOTES—DEED OF TRUST.—Schneider Bros., operating an automotive truck line, authorized to execute a deed of trust securing a note in the amount of $6,000, and to issue unsecured notes in the amount of $8,000.

Sanborn and Roehl and DeLancey C. Smith, for Applicants.

BY THE COMMISSION.

OPINION.

In this proceeding the Railroad Commission is asked to make its order authorizing Oscar Schneider, Walter Schneider and Frank

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Schneider, copartners doing business under the firm name and style of Schneider Bros., to execute a deed of trust and to issue promissory notes in the principal amount of $14,000.

The petition shows that applicants are engaged in the business of operating auto truck lines for the transportation of property, for compensation, between Sacramento and Auburn, and intermediate points, and between Sacramento and Wheatland, and intermediate points, and between Lincoln and Wheatland and intermediate points. They report for the first three months of 1928, operating revenues of $11,660.56; operating expenses, interest and miscellaneous charges of $11,022.84, and net profits of $637.72.

Their assets and liabilities as of March 31, 1928, are set forth in Exhibit "C" as follows:

Assets.

Plant and equipment	$83,419 85
Cash	866 81
Accounts receivable	2,919 38
Securities of other companies	4,000 00
Prepayments	876 62
Total assets	$92,082 66

Liabilities.

Notes payable	$15,100 00
Accrued liabilities	625 98
Accounts payable	5,736 19
Reserve for depreciation	55,838 85
Proprietor's account	14,781 64
Total liabilities	$92,082 66

The $15,100 of notes include $1,100 due California National Bank, payable in monthly installments; $6,000 due The Peoples Bank of Sacramento, which was payable on November 24, 1927 (one year after date) with interest at 7 per cent, and $8,000 due United Security Bank and Trust Company ninety days after date (April 3, 1928) with interest at 7 per cent. The $6,000 note is secured by a deed of trust on certain real property located in the town of North Sacramento.

Applicants now desire and ask for an order authorizing them to issue new notes for $6,000 and $8,000 and a deed of trust securing the payment of the $6,000 note. They report that the present notes were issued in connection with the acquisition of their property, or for the construction, completion, extension or improvement of their facilities or for the improvement or maintenance of their service or for the discharge or refunding of their obligations. Copies of the notes and deed of trust have been filed with the application.

ORDER.

Application having been made to the Railroad Commission for authority to issue notes and execute a deed of trust and the Railroad

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Commission being of the opinion that this is a matter in which a public hearing is not necessary and that the money, property or labor to be procured or paid for through the issue of the notes is reasonably required by applicants;

It is hereby ordered, that Oscar F. Schneider, Walter Schneider and Frank Schneider, copartners doing business under the firm name and style of Schneider Bros., be and they hereby are authorized to execute a deed of trust substantially in the same form as that filed with the petition herein as Exhibit "F," and to issue a note secured thereby in the principal amount of $6,000, payable on or before one year after date of issue with interest at not exceeding 7 per cent per annum, and also to issue their unsecured note, or notes, for an aggregate sum of $8,000, payable ninety days after date of issue, with interest at not exceeding 7 per cent per annum in renewal of the notes for like amounts now outstanding.

The authority herein granted is subject to the following conditions:

1. The authority herein granted to execute a deed of trust is for the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the terms of the Auto Stage and Truck Transportation Act and is not intended as an approval of said deed of trust as to such other legal requirements to which said deed of trust may be subject.

2. Applicants shall keep such record of the issue of the notes herein authorized as will enable them to file, within thirty days after such issue, a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted will become effective when applicants have paid the minimum fee prescribed by section 6 of the Auto Stage and Truck Transportation Act, and section 52 of the Public Utilities Act, which fee is $25.

Dated at San Francisco, California, this twentieth day of June, 1928.

Decision No. 19911.

IN THE MATTER OF THE APPLICATION OF FRANK MEATTEAUER FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE PASSENGER BUS SERVICE BETWEEN ONE HUNDRED SIXTEENTH STREET AND COMPTON AVENUE, AND SEVENTY-SEVENTH STREET AND CENTRAL AVENUE, IN THE CITY OF LOS ANGELES AND COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

Application No. 14540.

Decided June 21, 1928.

CERTIFICATES—MOTOR BUS OPERATION.—Application of Frank Meatteauer to operate motor bus service in Los Angeles denied.

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CERTIFICATES—GROUNDS FOR REFUSING—IN GENERAL.—A certificate to operate motor bus service was denied because of inefficient equipment, lack of ability to provide better equipment and improper braking and servicing of vehicles, although some small need for transportation service was shown.

F. H. Bowers, for Applicant.
Jesse E. Stephens, City Attorney of Los Angeles, by *James S. Ronnow*, for City of Los Angeles, Protestant.
James Gunn and *F. F. Ball*, for Board of Public Utilities and Transportation, City of Los Angeles, Protestant.
H. G. Weeks, for Los Angeles Railway Corporation, Protestant.
O. A. Smith and *H. O. Marler*, for Pacific Electric Railway, Protestant.

BY THE COMMISSION.

OPINION.

Applicant herein seeks a certificate of public convenience and necessity to operate a passenger bus service between 116th street and Compton avenue, and 77th street and Central avenue, both termini being in the city of Los Angeles, but over a route which is partially through the county of Los Angeles.

A public hearing herein was conducted by Examiner Williams at Los Angeles.

Applicant formerly operated a passenger automobile service in the city of Los Angeles north of 116th street (which is the south boundary line of the city), but recently sold his operating right. Previous to that time, applicant had conducted a jitney service in the former city of Watts which was annexed to the city of Los Angeles in May, 1926. Applicant possesses two vehicles, one of 15-passenger capacity and the other of 20-passenger capacity.

Applicant proposes a 5-cent fare on any part of a journey of approximately four and one-half miles, although his application stated a fare of 10 cents. Applicant was confused as to a through fare between termini and an intermediate fare, but admitted that nobody would be charged more than 5 cents, and that was his intention. Exhibit "A," proposing fares accordingly, was amended to show a straight 5-cent fare. Applicant proposes continuous service from 5 a.m. to 10 p.m. at night, with a running time of thirty-five minutes, with a thirty-minute headway in each direction.

Applicant further amended his application by stipulation that he would do no intermediate business between 103d street and his terminus at 116th street and Compton avenue, 103d street being the main business street east and west through the Watts district in the city of Los Angeles. Applicant presented as witnesses in his behalf, Aaron Young, Mrs. Hattie Lee Bell, Mrs. Robert Peace, R. Buford, H. D. Prowd, Mrs. I. C. Williams, Henrietta Humes and J. C. Johns. All of these witnesses supported applicant's proposal to conduct a transportation connecting with the San Pedro street line of the Los Angeles Railway Corporation which terminates at 77th street and Central avenue. According to their testimony, they are now required to walk

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ten blocks to the Pacific Electric Watts line which is the only transportation available without a walk of perhaps a mile or more to the Los Angeles Railway line. In fact, all of these witnesses, except one, live north of 93d street, and the only service they would require would be transportation to the yellow car connection. They agreed that approximately four or five hundred persons comprising a negro settlement would be benefited by the service. They testified it would also be useful for school children attending the school at Manchester avenue, nine blocks north from this district. There was no proof that any additional service is required south of 103d street.

The application was opposed by the city of Los Angeles principally upon the ground that the operation was competitive with operations exclusively within the city limits and under the jurisdiction of the Board of Public Utilities; that it was unnecessary and that the applicant was an unfit person to receive a certificate. According to the testimony of James Gunn, chief motor vehicle inspector of the Board of Public Utilities and Transportation, applicant, while conducting a service in the city of Los Angeles, had been found ignoring orders to stop before crossing railroad tracks; that his buses had been in poor condition; that one car had been in a wreck and was somewhat mutilated; that tests of the brakes upon the vehicles used by applicant had found them ineffective, and that this situation became so acute that applicant was induced to sell his operation rather than have his permit revoked. There was also proof, through W. H. H. Lenoir, as well as by Mr. Gunn, that the vehicles used by applicant formerly were kept in an unsanitary condition. Lenoir, who had been driving a bus for applicant, testified that he had not been paid $117, but it was further shown that his alleged debt was now in dispute before the Labor Board and was not determined, applicant disputing that he owed Lenoir anything. Applicant, in rebuttal, did not deny anything except that he owed Lenoir money.

From the record herein, it appears that there is some small need for transportation along the route chosen by applicant north of 93d street connecting with the Los Angeles Railway terminus at 77th street, but that the number of persons who would use such a service is so small as to make an independent operation between 103d street and 77th street futile, in that it could not be made profitable. Under the proof adduced, we are quite well satisfied that the operation proposed by applicant is not needed except as before indicated, and that, if needed in its entirety, applicant personally, by reason of the inefficient equipment proposed by him (which was formerly used by him in his city service) and his lack of ability to provide better equipment, is not a proper person to assume responsibility for any public transportation service. There is testimony undenied by applicant that he is given to

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sleeping while driving vehicles, and upon one occasion such lapse on his part caused a collision, and further proof that his vehicles are not properly braked or serviced and are not clean.

We, therefore, find as a fact upon the record herein, that public necessity and convenience do not require the service proposed by applicant, and accordingly the application should be denied. Such an order will be entered.

ORDER.

Frank Meatteauer having applied for a certificate of public convenience and necessity to operate a passenger bus service between 116th street and Compton avenue, and 77th street and Central avenue, a public hearing having been held, the matter having been duly submitted, and now being ready for decision:

The Railroad Commission of the State of California hereby declares that public necessity and convenience do not require the service herein proposed by applicant; and

It is hereby ordered, that the application herein be, and the same hereby is, denied.

For all other purposes, the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this twenty-first day of June, 1928.

DECISION NO. 19914.

IN THE MATTER OF THE APPLICATION OF SONOMA WATER AND IRRIGATION COMPANY, TO RETIRE ITS PREFERRED STOCK AND TO ISSUE FOUR THOUSAND FOUR HUNDRED SHARES OF SIX PER CENT CUMULATIVE PREFERRED STOCK.

Application No. 14461.

Decided June 22, 1928.

SECURITY ISSUES—STOCK.—Sonoma Water and Irrigation Company authorized to issue $40,070 of its common capital stock of the par value of $25 per share, in exchange for stock now outstanding, and to issue $100,000 of its 6 per cent cumulative preferred stock.

F. J. Kitmartin, for Applicant.

BY THE COMMISSION.

OPINION.

In the above entitled proceeding the Railroad Commission is asked to make its order authorizing Sonoma Water and Irrigation Company to issue $110,000 of 6 per cent cumulative preferred stock and $40,070 of common stock, divided into shares of the par value of $25 each, in exchange for, or to refund, $100,000 of 8 per cent preferred stock and $40,070 of common stock, divided into shares of the par value of $100 each, which now is outstanding.

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Sonoma Water and Irrigation Company is engaged in the business of supplying water for domestic and other uses in and about the towns of Sonoma, Sonoma Vista, Boyes Springs and Agua Caliente, Sonoma County. It appears that the corporation was organized on or about September 10, 1921, with an authorized capital stock of $500,000, divided into $300,000 of 8 per cent cumulative preferred stock, redeemable at 105, and $200,000 of common stock. Heretofore there has been issued for properties, both operative and nonoperative, $100,000 of the preferred stock and $40,070 of the common. The par value of the shares of stock outstanding is $100. The company has no bonds or notes outstanding or other indebtedness, aside from current accounts.

The company now reports that it is taking steps to amend its articles of incorporation so as to provide for 6 per cent cumulative preferred stock, instead of 8 per cent preferred, and for shares of the par value of $25 instead of $100. It proposes to retire the present outstanding 8 per cent preferred stock and to issue at this time $110,000 of the 6 per cent stock, such stock to be exchanged for the present preferred stock or sold for cash and the proceeds used to retire the present stock. The common stock will be exchanged on the basis of four shares of the new stock of the par value of $25 for each share now outstanding of the par value of $100, the total par value, $40,070, remaining unchanged.

The proposal of applicant will result in an increase in the capitalization of $10,000 caused by the calling of the present 8 per cent preferred stock at the premium of 5 per cent and the commissions and selling expenses in connection with the sale of the new stock, the testimony herein showing that the new stock will be sold at an estimated expense and commission of about one and one-eighth dollars a share. On the other hand, if the 6 per cent stock is issued and the 8 per cent stock redeemed, there will be a decrease in the annual cumulative dividend charges of $1,400. It is this apparent saving that is urged in support of the application. In this connection reference to the company's financial statements on file with the Commission shows revenues and expenses for the years ending December 31st, reported as follows:

Item	*1926*	*1927*
Operating revenue	$9,658 75	$13,298 46
Operating expenses, excluding depreciation	6,310 32	8,234 59
Net operating revenue	$3,348 43	$5,063 87
Nonoperating revenues	194 33	745 32
Balance	$3,542 76	$5,809 19

The annual dividends on the preferred stock now outstanding, amount to $8,000. The annual dividends on the proposed issue of preferred stock will aggregate $6,600. While this amount was not earned

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during either 1926 or 1927, applicant's present rates were not in effect during all of 1927.

This utility has been before the Commission on a number of occasions in matters affecting its rates and service and has been directed to take steps to improve its service. Obviously the company can more readily earn the $6,600 dividend charge on the proposed issue of $110,000 of 6 per cent preferred stock than it can the $8,000 dividend on the $100,000 of 8 per cent preferred stock now outstanding, so that the proposed transaction, it is thought, by relieving it of the heavier charges, should place it in a better financial position, which in turn should enable it to meet the demands for service upon it in a better manner. While this may be true, we do not believe that upon the showing made herein we should authorize the company to increase its outstanding capital stock with no corresponding increase in its property. Accordingly, we will, in the order herein, authorize the issue of not exceeding $100,000 of 6 per cent stock to refund the $100,000 of 8 per cent stock now outstanding.

For every four shares of the par value of $25 per share of 6 per cent preferred stock issued and sold, applicant must redeem at least one share of the par value of $100 of its 8 per cent preferred stock. If more cash is needed to redeem the 8 per cent stock than is realized from the sale of the 6 per cent stock, such cash must be obtained from some source other than the issue of additional stock.

ORDER.

Sonoma Water and Irrigation Company having applied to the Railroad Commission for authority to issue $150,070 of stock, a public hearing having been held before Examiner Vaughan, and the Railroad Commission being of the opinion that the issue of only $140,070 of stock is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that Sonoma Water and Irrigation Company be and it hereby is authorized to issue $40,070 of its common capital stock consisting of 1602.8 shares of the par value of $25 each, in exchange for the $40,070 of common capital stock now outstanding, consisting of 400.7 shares of the par value of $100 each.

It is hereby further ordered, that Sonoma Water and Irrigation Company be and it hereby is authorized to issue $100,000 of its 6 per cent cumulative preferred stock and to sell such stock at not less than par and to use approximately one and one-eighth dollars per share of stock sold to pay commissions and selling expenses and to use the remaining proceeds to redeem its outstanding 1000 shares ($100,000 par value) of the 8 per cent preferred stock and/or to deliver such stock.

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or any portion thereof, at par in exchange for the outstanding $100,000 of 8 per cent preferred stock upon the basis of par for par, provided that, as a condition precedent thereto or concurrently with the issue and sale and/or delivery of every four shares of the par value of $25 per share of the 6 per cent preferred stock issued and sold and/or delivered, applicant must redeem at least one share of the par value of $100 of its 8 per cent preferred stock.

It is hereby further ordered, that the authority herein granted shall become effective only when and if there is filed by applicant with the Railroad Commission the following:

1. A certified copy of its articles of incorporation amended, as indicated in the foregoing opinion.

2. A stipulation, in form satisfactory to the Commission, in which it declares that neither it, its successors nor assigns will ever urge the Commission or other public body having jurisdiction, to consider the par value of the stock herein authorized to be issued as a measure of value of applicant's properties for the purpose of fixing rates, or any other purpose.

It is hereby further ordered, that the authority herein granted, upon becoming effective, is subject to the following conditions:

a. Applicant shall keep such record of the issue, sale and delivery of the stock herein authorized, and of the disposition of the proceeds, as will enable it to file, on or before the twenty-fifth day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

b. Applicant shall file with the Commission a copy of every prospectus or other advertising literature in which the stock herein authorized is offered for sale.

c. The authority herein granted shall apply only to such stock as might be issued and sold on or before December 31, 1928.

It is hereby further ordered, that the application in so far as it involves the issue of $10,000 of 6 per cent preferred stock be and it hereby is denied without prejudice.

Dated at San Francisco, California, this twenty-second day of June, 1928.

DECISION No. 19916.

IN THE MATTER OF THE APPLICATION OF THE SAN FRANCISCO-SACRAMENTO RAILROAD COMPANY TO INCREASE MONTHLY COMMUTATION FARES BETWEEN SAN FRANCISCO AND VERBENA AND PITTSBURG AND RELATED POINTS.

Application No. 14766.

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Decided June 22, 1928.

RATES—RAILROAD—COMMUTATION FARES.—San Francisco-Sacramento Railroad Company authorized to publish commutation fares $1.30 higher than those now in effect at points between San Francisco and Verbena-Pittsburg, and all intermediate points.

C. W. Dillon for Applicant.

BY THE COMMISSION.

OPINION.

This is an application filed by the San Francisco-Sacramento Railroad Company, by its traffic manager, L. H. Rodebaugh, in the name and on behalf of all carriers, parties to tariffs, for authority under sections 15 and 63 of the Public Utilities Act to increase, effective July 1, 1928, the commutation fares between San Francisco on the Key System Transit Company on the one hand, and, on the other, points on the San Francisco-Sacramento Railroad, Verbena to Pittsburg, inclusive, as per Exhibit "A" attached to the application.

A public hearing was held before Examiner Geary at San Francisco, Thursday, June 14, 1928, and the matter having been submitted is now ready for an opinion and order.

By Decision No. 19822, dated May 29, 1928, in Application No. 11329 and Case No. 2467, the Key System Transit Company was authorized to increase its transbay monthly commutation fares by $1.30 per month, or from $5.20 to $6.50.

The San Francisco-Sacramento Railroad Company, under and in accordance with a certain contract dated January 30, 1911, with the Key System Transit Company, has the use of the facilities of the Transit Company for the transportation of passengers between Oakland (Fortieth and Shafter streets) and San Francisco, and the contract provides that in the division of the earnings of the joint monthly commutation fares the Key System Transit Company's proportion will be its full commutation fare in effect between the points of interchange at Oakland and San Francisco. Accordingly, beginning on July 1, 1928, the effective date of the increase between San Francisco and Oakland, this applicant must increase its allowance to the Key System Transit Company by $1.30 for each and every monthly commutation ticket issued in connection with its line.

The financial results obtained by the San Francisco-Sacramento Railroad during a number of years past have been most unsatisfactory, and there has been a steady decline in the railway operating revenues without any corresponding reduction in the railway operating expenses. For the year ending December 31, 1926, the operating revenues were $990,311.94; in 1927, $908,936.41, or a decrease of $81,375.54. The operating expenses in 1926 were $909,782.35, and in 1927, $919,666.34, an increase of $9,883.99. Net revenue from railway operations

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(profit) in 1926 was $80,529.59, and in 1927 a loss of $10,729.94. In 1926, after deducting taxes there was an operating income (profit) of $27,385.59, and in 1927, after deducting taxes, a loss of $56,039.32. The income balance transferred to profit and loss in 1926 was a deficit of $34,443.30; in 1927 a deficit of $122,793, and the total debit balance at the beginning of the year 1928 was $585,650.52.

It is apparent from the record made in this proceeding that applicant's financial condition is becoming worse year after year, and its failure to earn even the operating expenses and taxes during the year 1927 makes unwise any further reduction in its commutation revenue.

During the year 1927 applicant sold to the points involved 905 monthly commutation tickets, an average of 76 per month, and therefore the changes in fares represent an approximate increase of $100 per month in its payments to the Key System.

There were no appearances in opposition.

We find as a fact that the proposed commutation fares have been justified, and applicant should be authorized to increase the present commutation fares between San Francisco and all points on its line by $1.30, as set forth in Exhibit "A" attached to and made part of the application.

ORDER.

The San Francisco-Sacramento Railroad Company having filed its application for authority to increase monthly commutation fares by $1.30 at all points, Verbena to Pittsburg, inclusive, a public hearing having been held on said application, and the matter having been duly submitted;

It is hereby ordered, that the San Francisco-Sacramento Railroad Company be and it is hereby authorized to publish and file in a tariff or tariffs to become effective July 1, 1928, commutation fares $1.30 higher than those now in effect at points between San Francisco and Verbena-Pittsburg and all intermediate points.

Dated at San Francisco, California, this twenty-second day of June, 1928.

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DISMISSALS

AUTO STAGE APPLICATIONS

GRADE CROSSINGS

MISCELLANEOUS AND SUPPLEMENTAL ORDERS

56—56862

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TABLE A—DISMISSALS (Cases)

Dec. No.	Case No.	Litigants	Date
19225	2295	Commission's investigation into rates, charges, practices, etc. of Samuel H. Gerson, operating a water utility in Los Angeles county	Jan. 9, 1928
19234	2278	Highway Transport Company vs. Valley Truck Line et al	Jan. 10, 1928
19270	2329	City of Pasadena vs. Los Angeles Gas and Electric Corporation	Jan. 20, 1928
19271	2368	Mrs. M. K. Davis (Mt. Shasta-McCloud Auto Stage) vs. The McCloud River Railroad Company	Jan. 20, 1928
19272	2423	Globe Grain and Milling Company vs. The Atchison, Topeka and Santa Fe Railway Company	Jan. 20, 1928
19534	2422	Petaluma and Santa Rosa Railroad Company vs. C. R. Hooper	Jan. 20, 1928
19772	2499	Huntington Beach Water Company vs. Commission's investigation into rates, rules, etc. of	Jan. 20, 1928
19833	2447	The Chronicle Publishing Company vs. Coast Side Transportation Company and California Transit Company	Mar. 30, 1928
19909	2525	O. P. Mills vs. San Jose Water Works	May 17, 1928
19913	2509	Ben Ali-Hacienda Improvement Club vs. R. W. Huston, John C. Ford (Bankrupt), North Sacramento Land Co.	May 29, 1928
			June 20, 1928
			June 21, 1928

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TABLE B—DISMISSALS (Applications)

Dec. No.	App. No.	Applicant	Nature of proceedings	Date
19186	13338	El Pizmo Water Company	To issue and sell securities	Dec. 23, 1927
19189	12733	Southern Pacific Company	To close Summit Station and remove Soda Springs Station to another location	Dec. 23, 1927
19191	13980	Tolson Transportation System, Inc.	Lewis A. Monroe, agent, to publish new local freight tariff between Los Angeles and other named points	Dec. 23, 1927
	13981	Richards Trucking and Warehouse Company		
	13982	City Transfer and Storage Company		
	13988	Zimmerman Brothers		
19199	14065	Kennett Water Company	To discontinue water service to the town of Kennett, Shasta County	Dec. 30, 1927
19224	13946	City of Torrance	For order to Santa Fe and Los Angeles Harbor Railway Company to maintain an automatic flagman at Redondo Boulevard and Madrid Avenue	Jan. 9, 1928
19268	11196	California Highway Commission	To construct state highway crossing under tracks of Inter-California Railroad, leased and operated by the Southern Pacific Railroad, near Araz Junction, Imperial County	Jan. 20, 1928
19269	13746	Key System Transit Company	To abandon spur track located at Claremont Avenue and 56th Street, Oakland, Alameda County	Jan. 20, 1928
19275	13843	San Rafael Freight and Transfer Company	To amend certificate to operate auto truck line between San Francisco and Santa Rosa, authorizing elimination of weight limit of 60 pounds per package	Jan. 20, 1928
19295	12931	McCloud River Railroad Company	To operate auto service between Mt. Shasta and McCloud	Jan. 23, 1928
19298	14259	City of Palo Alto	To have just compensation fixed and determined to be paid to Pacific Gas and Electric Company for its gas distributing system in the former town of Mayfield, now city of Palo Alto	Jan. 30, 1928
19299	14260	City of Palo Alto	For an order of the Commission fixing just compensation to be paid to Pacific Gas and Electric Company for its electric power and light distributing system in the former town of Mayfield, now city of Palo Alto	Jan. 30, 1928
19359	14363	Roseville Telephone Company	To file and make effective a rate for hand telephone set	Feb. 15, 1928
19395	13932	Southern Pacific Company	To construct side track at grade across the state highway and across county road in vicinity of Modesto, Stanislaus County	Feb. 20, 1928
19423	13723	E. V. Hales and E. R. Seaman (Oaks Light and Power Company)	To generate and transmit electrical energy	Feb. 28, 1928
19424	14313	County of Los Angeles	To construct overhead crossing over tracks of Pacific Electric Railway on Eastern Avenue in said county	Feb. 28, 1928
19433	14391	The Western Pacific Railroad Company	To operate a track with impaired clearance	Mar. 2, 1928
19466	13202	Nevada, California and Oregon Telegraph and Telephone Company	To issue $36,000 of first mortgage six and one-half per cent bonds; the company having applied to issue and sell $145,000 of such bonds and the Commission having authorized the issue and sale of $109,000 only in previous order	Mar. 10, 1928
19561	13515	City of Long Beach	To construct crossing at grade over tracks of Pacific Electric Railway Company by public street	April 2, 1928
19575	14437	W. L. Cavanaugh	To hypothecate to E. May Clayes an auto stage line operated between Modesto and Oakdale and intermediate points as security for payment of debts	April 9, 1928
19624	12763	Key System Transit Company	To construct, lay down and maintain spur track across Linden Street at 42d Street at grade in the city of Oakland, Alameda County	April 17, 1928
19625	14244	City of Burbank	For permission to install grade crossing over tracks of Southern Pacific Company at Hollywood Way in said city	April 17, 1928

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19649	14054	Charles A. Hare, Nick Gombos and William H. Neill	For certificate to operate auto freight and express service between San Francisco and numerous points	April 21, 1928
19650	14324	Gilroy Company	For certificate to operate auto freight and express service between San Francisco and various points	April 21, 1928
19676	14477	California Transit Company and Truman J. Cole	Former to lease to latter operative rights between Los Banos and Merced	April 25, 1928
19695	14377	Pacific Electric Railway Company	To abandon service and remove tracks on Smiley Heights line in City of Redlands	May 2, 1928
19702	14524	Albert T. Spencer	To sell and E. L. Wheeler to purchase certain portion of auto freight line operated between Hynes, Clearwater, Bellflower and Los Angeles	May 2, 1928
19728	14514	Northwestern Pacific Railroad Company	To remove station agent from its station at B Street, San Rafael	May 8, 1928
19729	14513	Northwestern Pacific Railroad Company	To remove station agent from its station at West End, San Rafael	May 8, 1928
19749	14236	C. C. Tanner (Tanner Motor Tours)	To operate sight-seeing auto tours between Santa Barbara and Los Angeles	May 11, 1928
19790	13986	Southern Pacific Company	To construct two spur tracks at grade across a portion of Harrison Street between 17th and 18th Streets, city and county of San Francisco	May 22, 1928
19816	12764	Stockton and Mokelumne Canal Company	To discontinue service or be granted an increase in rates	May 26, 1928
19834	14645	Eagle Rock Chamber of Commerce	For an order requiring universal transfers to be granted between the Glendale and Montrose Railway Company and the Los Angeles Railway Corporation	May 29, 1928
19908	12920	Golden State Auto Tour Corporation	To operate three-day tour between Los Angeles and various other southern California points	June 20, 1928

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TABLE C—AUTO STAGE APPLICATIONS

Dec. No.	App. No.	Applicant	Nature of proceedings	Action	Date
19190	13179	Peerless Stages, Inc.	Petition of Peninsula Rapid Transit Company and Pacific Auto Stages, Inc., protestants for rehearing	Denied	Dec. 23, 1927
19195	14273	M. K. Davis and McCloud River Railroad Company	Former to sell to latter operating right for auto passenger and baggage service between Mt. Shasta and McCloud	Granted	Dec. 27, 1927
19228	13864	Sam Newton and Thomas Biggart	To sell and transfer to Joseph Wythe and R. E. Hoerler an auto truck line between San Jose and Hollister and intermediate points	Granted	Jan. 10, 1928
19230	14183	Riel Dani	To abandon auto passenger and freight service between King City and Jolon	Granted	Jan. 10, 1928
19277	14205	G. L. Morrison and C. R. Stewart	Former to sell to latter auto stage line operated between Dunsmuir and Weed	Granted	Jan. 23, 1928
19278	14292	C. R. Stewart and Souther Pacific Motor Transport Company	Former to sell to latter auto stage line operated between Dunsmuir and Weed	Granted	Jan. 23, 1928
19281	10148	Asbury Truck Company	Petition of protestants, Bakersfield and Los Angeles Fast Freight, Coast Truck Line, City Transfer and Storage, Glendale and Los Angeles Express, Monrovia and Los Angeles Express et al., for rehearing of application for certificate to operate auto freight service between all points in California	Denied	Jan. 23, 1928
19309	13906	Nugie's Sudden Service	To operate auto truck line between Los Angeles and certain points in Mono County	Denied	Feb. 6, 1928
19317	14380	John S. Zuckerman and W. L. Cavanaugh	Former to sell to latter auto stage line operated between Modesto and Oakdale and intermediate points	Granted	Feb. 6, 1928
19333	14364	Frank C. Johnson (Ojai-Ventura and Los Angeles Express)	To sell and transfer to Howard M. Lang operating right for auto truck line between Los Angeles, Ventura and Ojai and intermediate points, for the sum of $50,000	Granted	Feb. 6, 1928
19343	12474	C. C. Cochran	For rehearing of application for certificate to operate auto stage line between Sacramento and Chico and intermediate points via Verona, Yuba City, Marysville, Live Oak and Durham	Denied	Feb. 6, 1928
19374	11801	Coastside Transportation Company	To reopen proceedings relative to application to operate auto passenger and baggage service between San Francisco, Pescadero and Santa Cruz, etc.	Denied	Feb. 16, 1928
19404	14425	Wesley H. Pfost and G. E. Covington	Former to sell to latter operating right for auto freight line between Blythe and Palo Verde	Granted	Feb. 25, 1928
19410	13087	L. R. Kagarise (Keystone Express)	To extend present freight and express service to points in southern California, excepting Los Angeles proper and territory intermediate between Los Angeles and San Gabriel Boulevard, and to operate "on demand" service on various routes throughout southern California	Granted	Feb. 25, 1928
	13378	Motor Service Express	To operate between Alhambra and Ontario via Valley Boulevard, and between Pasadena and Cucamonga via Foothill Boulevard	Denied	Feb. 25, 1928
19434	14441	San Antonio Transfer Company, a common law trust	To sell and transfer to Roy Woolsey, Mamie Woolsey and Minnie F. Mills operating rights for auto passenger line between Upland and Ice House Canyon and Manker Flats for $5,000	Granted	Mar. 3, 1928

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19435	14459	J. O. Bray and Thomas Petersen	Former to sell and transfer to latter auto freight line between Fresno and Lanare for $600	Granted	Mar. 3, 1928
19446	14464	Whittier Select Citrus Association	To discontinue operation of auto truck service between Whittier and Rivera and Wilmington and San Pedro	Granted	Mar. 10, 1928
19447	13073 13545	Feather River Stages (S. B. and A. A. Johnson) Mt. Lassen Transit Company	To operate auto passenger and express service between Oroville, Buck's Power Plant and intermediate points	Denied	Mar. 10, 1928
19459	14436	B. S. Albush and A. L. Wentz	Former to sell to latter auto passenger, freight line between Placerville and Pino Grande, El Dorado County	Granted	Mar. 10, 1928
19474	14480	Tony Rampone and Pete Rampone	Former to sell to latter a one-half interest in auto freight line operated between Sherman Island and Oakland and San Francisco for sum of $5,000	Granted	Mar. 12, 1928
19505	11319	Hemet Transfer and Storage	Petition for rehearing by W & S Truck Company, a protestant, of application to operate auto truck service between Los Angeles and Los Angeles Harbor points, etc.	Denied	Mar. 21, 1928
19509	14485	T. H. Adams and F. J. Rice	Former to sell to latter auto passenger line operated between Whittier Boulevard and First and Rowan Streets in county of Los Angeles	Granted	Mar. 21, 1928
19516	14488	Emma D. Dunham, administratrix of Estate of Azariah Dunham	To take over the ownership and operation of an auto stage line operated between Sacramento and Jackson and intermediate points	Granted	Mar. 22, 1928
19517	14499	Frank Munoz, A. Torrescano and C. Lagasphy, co-partners	To sell and transfer auto freight line operated between San Diego and Tia Juana to H. G. Ray	Granted	Mar. 22, 1928
19542	14153	Key System Transit Company	To abandon motor bus service between terminus at Santa Clara Avenue and High Street in city of Alameda and terminus at Ygnacio Avenue and High Street in city of Oakland	Granted	April 2, 1928
19544	14320	California Transit Company	To abandon auto stage service between Biola and San Joaquin via Kerman and to reroute its Fresno-Mendota stages so as to serve Kerman to and from Kerman Junction; to reroute stages between Stockton and Oakdale and points east via Manteca; to reroute stages in city of Sacramento via M Street and Fifth Street to its stage depot; reroute stages within city of Davis; to reroute stages within city of Vallejo over Sonoma Street north from junction of Sonoma and Virginia Street; to route its stages operating over Carquinez Straits via the Carquinez Bridge	Granted	April 2, 1928
19550	14533	C. E. Ducret and A. A. Crabb	Former to sell to latter operating right for auto stage line between Gilroy and Gilroy Hot Springs	Granted	April 2, 1928
19586	14262	James T. Agajanian	To operate auto milk truck service between Arlington, Riverside, Colton and San Bernardino as extension of present operations between Los Angeles, Riverside and Arlington	Granted	April 12, 1928
19609	14565	Shakarian, Kardashian and Perumean	To transfer to S. J. Stratton a one-fourth interest in an operating right for auto truck line operated between ranches in vicinity of Hynes, Clearwater and Downey and Los Angeles	Granted	April 13, 1928
19619	14333	Santa Barbara and Suburban Railway Company	To discontinue operation of State Street motor bus line in city of Santa Barbara	Granted	April 17, 1928
19668		Pacific Electric Railway Company	To discontinue motor coach service on Wilshire Boulevard between Fairfax Avenue and Canon Drive	Granted	April 25, 1928
	14590	Los Angeles Railway Corporation	To discontinue motor coach service in city of Los Angeles over certain routes	Granted	April 25, 1928
		Los Angeles Railway Corporation and Pacific Electric Railway Company	To operate auto stage service within city of Los Angeles and between Los Angeles and Beverly Hills over certain routes	Granted	April 25, 1928

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TABLE C—AUTO STAGE APPLICATIONS—Continued

Dec. No.	App. No.	Applicant	Nature of proceedings	Action	Date
19685	14253	Motor Service Express	To extend service to all points intermediate between Los Angeles, Venice, Ocean Park and Santa Monica via Washington Boulevard and Santa Monica Boulevard	Granted	April 27, 1928
19697	14442	F. W. Reed	To transfer to Sophie H. Reed operating right for auto truck service for transportation of milk, cream and dairy products between Los Angeles and Burbank and Glendale	Granted	May 2, 1928
19704	14659	A. J. Lundberg, C. C. Vargas, H. P. Bell, J. P. Potter and Paul Goldsmith	To operate motor bus service in the city of San Leandro and to transfer said operative right to "Key System-San Leandro Bus Company" when said company has been incorporated	Granted	May 2, 1928
19711	14516	Key System Transit Company	Petitions for rehearing by Oakland Business District Association, and for reopening by Oakland Chamber of Commerce and Alameda Chamber of Commerce of certificate to operate motor bus service from city hall in Oakland through Oakland Estuary tube to Alameda, but hearing will be held before approval of routes is given	Denied	May 4, 1928
19713	14049 C2450	Pickwick Stages System and E. C. Craig Soren Sorenson vs. Pickwick Stages System and E. C. Craig	Petition for rehearing by Pickwick Stages System	Denied	May 4, 1928
19714	13868	Sequoia and General Grant National Parks Company	To re-route auto stage line between Fresno and Hume over the Miramonte Road instead of over the Millwood Road, and to abandon service to the points of Traweeks, Sontag Point and Millwood	Granted	May 4, 1928
19716	14031	Kern County Transportation Corporation	To operate auto stage line between Taft and Taft Gate provided no local service be rendered between Taft and Maricopa	Denied	May 8, 1928
19727	14359	Paul Derkum and Chas. E. Sansome	To modify Decision No. 19626—auto stage service between Bakersfield and Conner's station	Granted	May 8, 1928
19730	13819	George W. Wilkins and Guy S. Alexander	Petition of applicants for rehearing—former to sell to latter one-half interest in auto stage line between Bishop and Mono Lake, and latter and L. B. Larson to extend service from all points north of Bishop to Pasadena and Los Angeles	Denied	May 8, 1928
19737	14414	Allen and Reese Stages	To operate auto express service between Fresno and Sanger and intermediate points, packages to weigh not more than 100 pounds	Granted	May 9, 1928
19738	14486	David S. Mitchell	To operate motor truck service between Doyle and Susanville and intermediate points	Granted	May 9, 1928
19739	14591	Motor Transit Company	To operate auto passenger and express service between Gilman's Hot Springs and Soboba Hot Springs and intermediate points	Granted	May 9, 1928
19740	14596	J. K. Vanderhurst and Duda	To sell to Tassajara Hot Springs Company an auto passenger and freight line between Salinas and Tassajara Hot Springs	Granted	May 9, 1928
19742	14629	The Gray Line Motor Tours, Inc.	To discontinue sight-seeing Movie Studio-Mt. Lowe Tour No. 4, operated in conjunction with Pacific Electric Railway	Granted	May 9, 1928
19743	14644	George A. Scott and Mt. Lassen Transit Company	Former to sell to latter auto passenger and express line between Susanville and Camps A, B, C, D and E of Fruit Growers Supply Company	Granted	May 9, 1928

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19758	14651	Joe Bozoff and Jake Toroff (Acop Tarvoff) and Robert D. Lanzit, receiver of property of said co-partnership	To sell and George J. Abajian, Joe Bozoff, Kazaroff Anthoyan and Haig Stepanian, co-partners, to purchase auto transportation service for milk and dairy products between farms in the vicinity of Clearwater, Hynes and Artesia and Los Angeles, and between same territory and Long Beach	Granted	May 11, 1928
19761	14669	D. J. Blakesley	To sell and Joseph Perumean and Company to purchase auto truck service between Rivera, Los Nietos, Santa Fe Springs, Laguna, Cudahy, Bell and Los Angeles	Granted	May 11, 1928
19773	14601	Peter Williamson and Sam M. Lloyd	Former to sell to latter auto freight line between Los Angeles, Montrose, Tujunga, Pasadena, South Pasadena and Alhambra	Granted	May 17, 1928
19774	14618	Benedict and Moorman, co-partners, and Frank J. Dresman	Both operating similar service between Los Angeles and Huntington Park and intermediate points, to sell said rights to John W. Shepherd and Miss Ethel Riddle, co-partners	Granted	May 17, 1928
19779	14526	C. G. Lusher	To operate auto freight service for transportation of milk, cream and dairy products and freight and express between Escondido, Valley Center, Woods Valley and Bear Valley and all intermediate points	Granted	May 18, 1928
19792	14624	Michael M. Donahue	To operate auto passenger service between Lamanda Park Junction in city of Pasadena, and intersection of Rosemead Boulevard and Huntington Drive in county of Los Angeles	Granted	May 22, 1928
19793	14641	A. L. Wentz and Walter C. Clifton	Former to sell to latter auto passenger, baggage and package service between Placerville and Pino Grande	Granted	May 22, 1928
19800	10858	Wilmington Transfer and Storage Company, Inc.	Petition for rehearing to operate auto truck service between Los Angeles Harbor District and Los Angeles proper	Denied	May 23, 1928
19808	14715	Sarop Meketaroff and M. Alex	To sell and Bob Arutoff to purchase auto freight line between Los Angeles and Athens, Gardena, Rosecrans and Wilmington	Granted	May 24, 1928
19825	14588	The Gray Line Motor Tours, Inc.	To operate auto sight-seeing passenger service between Los Angeles and adjacent points	Granted	May 29, 1928
19826	14703	Southern Pacific Motor Transport Company	To operate auto passenger and express service between all points intermediate between Napa and Santa Rosa	Granted	May 29, 1928
19827	14725	A. P. Weger and Son	To discontinue auto stage service between Ukiah and Orr's Springs	Granted	May 29, 1928
19852	14542	Fay Haynes and A. C. Stromwell	To operate auto stage and truck line for transportation of passengers, freight and express between city of Fresno and Fresno City Municipal Airport	Granted	June 1, 1928
19853	14745	Elmer L. and Roy C. Webb	To discontinue operation of auto stage service between San Diego and San Pasqual Valley and intermediate points	Granted	June 1, 1928
19872	14639	Beverly Gibson	To operate auto passenger and baggage service between Folsom and Represa, as extension of present service between Sacramento and Folsom	Granted	June 11, 1928
19903	14649	Los Angeles Railway Corporation	To extend its Florence Avenue motor coach line westward from South Broadway along Florence Avenue and Angeles Mesa Drive to 67th Street in city of Los Angeles (Decision No. 17808)	Granted	June 20, 1928
19915	14737	George Wm., William M. and Ralph B. Smith	To sell to H. F. Calloway an auto passenger and baggage line operated between Etna and Yreka, Siskiyou County	Granted	June 22, 1928

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TABLE D—GRADE CROSSINGS

Dec. No.	App. No.	Applicant (and other parties)	Location	Action	Date
19197	14268	Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company (City of Oakland)	Twenty-second Street	Granted	Dec. 30, 1927
19220	14290	The Atchison, Topeka and Santa Fe Railway Company (City and County of San Francisco)	Rhode Island and Fifteenth Streets	Granted	Jan. 9, 1928
19221	14291	The Atchison, Topeka and Santa Fe Railway Company (City and County			
19221	14291	of San Francisco)	Twenty-fifth and Tennessee Streets	Granted	Jan. 9, 1928
19237	14067	City of Glendale (Pacific Electric Railway Company)	Highland Avenue	Granted	Jan. 10, 1928
19238	14118	California Highway Commission (Southern Pacific Company, Inyo County)	Near Owenyo	Granted	Jan. 10, 1928
19239	14180	City of San Diego (San Diego and Arizona Railway)	Merlin Drive	Granted	Jan. 10, 1928
19240	14279	Southern Pacific Company (City and County of San Francisco)	San Bruno Avenue	Granted	Jan. 10, 1928
19241	14288	The Western Pacific Railroad Company (Town of Hayward)	Grand Street	Granted	Jan. 10, 1928
19243	14117	California Highway Commission (Southern Pacific Company, Inyo County)	Near Owenyo	Granted	Jan. 11, 1928
19244	14225	Sacramento County (Southern Pacific Company)	Vicinity of Freeport	Granted	Jan. 11, 1928
19245	14235	County of Santa Clara (Peninsular Railway Company)	Vicinity of Saratoga	Granted	Jan. 11, 1928
19247	14297	Southern Pacific Company (City of Alameda)	Blanding Avenue	Granted	Jan. 11, 1928
19248	14308	Southern Pacific Company (Vicinity of Fresno)	Sarah Street	Granted	Jan. 11, 1928
19282	14331	Southern Pacific Company (Pajaro Valley Consolidated Railroad)	Vicinity of Salinas	Granted	Jan. 23, 1928
19302	14347	The Western Pacific Railroad Company (City and County of San Francisco)	Langton Street	Granted	Jan. 31, 1928
19307	13703	Southern Pacific Company (Vicinity of Redwood City, San Mateo County)	Middlefield Road	Granted	Feb. 6, 1928
19311	14202	County of Los Angeles (Pacific Electric Railway)	Carlyle Street	Denied	Feb. 6, 1928
19324	14254	County of Los Angeles (Los Angeles and Salt Lake Railroad Company)	Coolidge Avenue	Granted	Feb. 6, 1928
19325	14270	County of Lassen (Nevada, California, Oregon Railway)	Horse Lake-Ravendale Road	Granted	Feb. 6, 1928
19329	14304	California Highway Commission (Southern Pacific Company)	Near Brighton Station, Sacramento County (subway)	Granted	Feb. 6, 1928
19330	14307	County of Orange (The Atchison, Topeka and Santa Fe Railway Company)	Vicinity of station of Atwood (undergrade)	Granted	Feb. 6, 1928
19331	14319	Los Angeles and Salt Lake Railroad Company (City of Los Angeles)	Ocean Avenue near Ferry Street	Granted	Feb. 6, 1928
19336	14330	County of Los Angeles (Los Angeles and Salt Lake Railroad Company)	Wardlow Road	Granted	Feb. 6, 1928
19347	14356	County of Orange (Southern Pacific Company)	South Main Street	Granted	Feb. 7, 1928
19354	14412	County of Kern (Southern Pacific Company)	Bakersfield-Tehachapi-Mojave Highway near Monolith	Granted	Feb. 14, 1928
19367	14362	City of Burbank (Southern Pacific Company)	Magnolia Boulevard	Granted	Feb. 15, 1928
19370	14312	County of Los Angeles (Southern Pacific Company)	Section Line Road	Granted	Feb. 15, 1928
19382	14357	W. A. Bechtel and The Western Pacific Railroad Company (County of Butte)	Oroville-Marysville County Highway	Granted	Feb. 18, 1928
19385	14158	County of Los Angeles (Southern Pacific Company)	Manchester Avenue (Firestone Boulevard)	Granted	Feb. 20, 1928
19386	14161	Pacific Electric Railway Company (City of Los Angeles)	Santa Monica Boulevard	Granted	Feb. 20, 1928
19405	14296	Southern Pacific Company (City of Calexico)	Second Street	Granted	Feb. 25, 1928
19406	14382	Southern Pacific Company (City of Redlands)	Seventh Street and portions of Redlands Avenue	Granted	Feb. 25, 1928
19415	14397	Pacific Electric Railway Company (City of Rialto)	Olive Street	Granted	Feb. 28, 1928
19417	14355	Southern Pacific Company (City of Salinas)	Cattleman's Lane	Granted	Feb. 28, 1928

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19418	14385	County of Los Angeles (Pacific Electric Railway Company)	Eastern Avenue	Granted	Feb. 28, 1928
19419	14390	Southern Pacific Company (City of Santa Cruz)	Fern Street	Granted	Feb. 28, 1928
19420	14413	Southern Pacific Company (City of Salinas)	Summer Street	Granted	Feb. 28, 1928
19421	14426	County of San Bernardino (Trona Railway Company)	Randsburg-Searles Lake Road	Granted	Feb. 28, 1928
19429	14422	City of San Bruno (Southern Pacific Company)	San Mateo Avenue	Granted	Mar. 2, 1928
19430	14381	Department of Engineering, Division of Highways (Southern Pacific Company)	State highway near Araz Junction, Imperial County	Granted	Mar. 2, 1928
19439	14394	Department of Public Works, Division of Highways (Southern Pacific Company)	State highway (undergrade) near Helisma, Calaveras County	Granted	Mar. 3, 1928
19440	14177	Los Angeles Junction Railway Company (Vicinity of Vernon, Los Angeles County)	Laguna Road	Granted	Mar. 3, 1928
19441	14455	Southern Pacific Company (City and County of San Francisco)	Harrison Street	Granted	Mar. 3, 1928
19461	14371	Los Angeles Railway Corporation (Pacific Electric Railway Company, City of Los Angeles)	West Fifth Street and Figueroa Street	Granted	Mar. 10, 1928
19462	14432	Southern Pacific Company (City of San Jose)	Mission and North Ninth Streets	Granted	Mar. 10, 1928
19480	14433	McCloud River Railroad Company (McCloud, Siskiyou County)	Loading track	Granted	Mar. 16, 1928
19483	14406	The Atchison, Topeka and Santa Fe Railway Company (County of Los Angeles)	East 26th Street, east of Atlantic Boulevard	Granted	Mar. 16, 1928
19484	14407	The Atchison, Topeka and Santa Fe Railway Company (County of Los Angeles)	East 26th Street, east of Atlantic Boulevard	Granted	Mar. 16, 1928
19486	14416	County of Alameda (Southern Pacific Company)	Vicinity of town of Niles	Granted	Mar. 16, 1928
19490	14463	Santa Fe and Los Angeles Harbor Railway Company (City of Torrance)	Madrona Avenue	Granted	Mar. 16, 1928
19495	14395	Peninsular Railway Company (Vicinity of San Jose)	Laswell and Vaughn Avenues	Granted	Mar. 20, 1928
19496	14417	The Atchison, Topeka and Santa Fe Railway Company (City of Escondido)	Illinois Avenue	Granted	Mar. 20, 1928
19497	14423	County of Los Angeles (Pacific Electric Railway Company)	Robinson Street	Granted	Mar. 20, 1928
19522	14482	Southern Pacific Company (City of Sacramento)	Twenty-second and R Streets	Granted	Mar. 27, 1928
19524	14384	Southern Pacific Company (City of Fresno)	Olive, West, Clinton and Ashlan Avenues	Granted	Mar. 27, 1928
19528	13861	City of Torrance (Pacific Electric Railway Company)	El Prado and Border Avenues	Granted	Mar. 30, 1928
	14306	Pacific Electric Railway Company (City of Los Angeles)	Western Avenue and 220th Street	Granted	Mar. 30, 1928
19535	14440	Southern Pacific Company (City of Modesto)	H Street	Granted	Mar. 30, 1928
19537	14494	Southern Pacific Company (City of Modesto)	Crows Landing Road	Granted	Mar. 30, 1928
19552	14445	City of Torrance (Pacific Electric Railway Company)	El Prado Street	Granted	April 2, 1928
19554	14493	The Atchison, Topeka and Santa Fe Railway Company (City of Richmond)	Atchison Avenue, Second, Third and Fourth Streets and Cutting Boulevard	Granted	April 2, 1928
19555	14508	Southern Pacific Company (City of Montague, Siskiyou County)	Tenth Street south of Spiers Street	Granted	April 2, 1928
19556	14517	Southern Pacific Company (City of Marysville)	Eighth, Ninth and Tenth Streets	Granted	April 2, 1928
19564	14435	County of Los Angeles (Pacific Electric Railway Company)	Sierra Madre Avenue	Granted	April 3, 1928
19573	14510	City of Inglewood (Pacific Electric Railway Company)	Stella Street	Granted	April 9, 1928
19603	14100	City of Burlingame (Southern Pacific Company and Market Street Railway Company)	Morrell Avenue (pedestrian)	Granted (partly)	April 13, 1928
19605	14361	City of Beverly Hills (Pacific Electric Railway Company)	Camden Drive	Granted	April 13, 1928
19621	14512	County of Sonoma (Southern Pacific Company)	Eucalyptus Drive	Granted	April 17, 1928
19622	14543	Southern Pacific Company (County of Los Angeles)	Vicinity of Norwalk Station	Granted	April 17, 1928
19623	14573	Southern Pacific Company (City and County of San Francisco)	Carroll Avenue	Granted	April 17, 1928
19630	14555	Southern Pacific Company (City of El Centro)	Main Street	Granted	April 18, 1928
19636	14566	Southern Pacific Company (City of Oakland)	East Twelfth Street	Granted	April 20, 1928
19642	14453	Southern Pacific Company and Fresno Traction Company (City of Fresno)	Fresno and Roeding Park	Granted	April 20, 1928

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TABLE D—GRADE CROSSINGS—Continued

Dec. No.	App. No.	Applicant (and other parties)	Location	Action	Date
19655	14589	Southern Pacific Company (City of Burlingame)	Broadway	Granted	April 23, 1928
19663	14467	The Atchison, Topeka and Santa Fe Railway Company (Contra Costa County)	East of Pittsburg	Granted	April 23, 1928
19665	14594	Southern Pacific Company (City of Oakland)	Kirkham Street	Granted	April 24, 1928
19669	13686	County of San Diego (San Diego and Arizona Railway Company)	Lincoln Avenue	Granted	April 25, 1928
19670	14349	Visalia Electric Railroad Company (County of Tulare)	Vicinity of El Mirador	Granted	April 25, 1928
19671	14519	The Atchison, Topeka and Santa Fe Railway Company (Vicinity of Escalon, San Joaquin County)	St. Johns Road	Granted	April 25, 1928
19672	14527	County of Santa Clara and Norman A. Goddard (Peninsular Railway Company)	Vicinity of Palo Alto	Granted	April 25, 1928
19675	14569	The Atchison, Topeka and Santa Fe Railway Company (City of Oakland)	Union Street	Granted	April 25, 1928
19687	14621	Southern Pacific Company (City of Sacramento)	North B Street	Granted	April 27, 1928
19688	14616	Southern Pacific Company (City of Vacaville)	Mason Street	Granted	April 27, 1928
19693	14311	County of San Diego (San Diego and Arizona Railway Company)	Sixth Street	Granted	May 2, 1928
19694	14329	Pacific Electric Railway Company (City of Los Angeles)	Normandie Avenue	Granted	May 2, 1928
19700	14602	Southern Pacific Company (City of Burbank)	Front Street	Granted	May 2, 1928
19705	14570	County of Yolo (Sacramento Northern Railroad)	Vicinity of Hebron Station	Granted	May 2, 1928
19708	14506	County of Sacramento (Central California Traction Company)	Carly Avenue	Granted	May 3, 1928
19717	14538	County of Kern (Southern Pacific Company)	Sec. 27, T. 25 S., R. 26 E., M. D. M.	Granted	May 8, 1928
19719	14600	County of San Bernardino (The Atchison, Topeka and Santa Fe Railway Company)	Vicinity of Newberry	Granted	May 8, 1928
19720	14617	County of Contra Costa (Southern Pacific Company)	Near Maltby	Granted	May 8, 1928
19721	14652	The Atchison, Topeka and Santa Fe Railway Company (County of Tulare)	Vicinity of Exeter	Granted	May 8, 1928
19744	14586	The Atchison, Topeka and Santa Fe Railway Company (Kings County)	Vicinity of Hanford	Granted	May 9, 1928
19751	14471	Southern Pacific Company (City of Los Angeles)	Penrose Avenue	Granted	May 11, 1928
19752	14507	Southern Pacific Company (City of Los Angeles)	Sheldon Avenue	Granted	May 11, 1928
19753	14561	San Diego County (The Atchison, Topeka and Santa Fe Railway Company)	At Buena	Granted	May 11, 1928
19754	14568	The Atchison, Topeka and Santa Fe Railway Company (Town of Olive)	Anaheim Boulevard	Granted	May 11, 1928
19756	14654	Southern Pacific Company (City of San Jose)	Newhall, Hamline and Laurel Streets	Granted	May 11, 1928
19757	14656	Southern Pacific Company (City of Santa Clara)	Brokaw Road	Granted	May 11, 1928
19766	14633	Southern Pacific Company (City and County of San Francisco)	Illinois and Sixteenth Streets	Granted	May 15, 1928
19767	14660	Tidewater Southern Railway Company (City of Turlock)	Fifth, Fourth and Third Streets	Granted	May 15, 1928
19775	14671	The Atchison, Topeka and Santa Fe Railway Company (County of San Diego)	Estrella Drive, vicinity of Buena	Granted	May 17, 1928
19784	14597	City of La Mesa (San Diego and Arizona Railway Company)	Allison Avenue	Granted	May 21, 1928
19785	14637	City of Oakland (Central Pacific Railway Company)	Eighty-fifth Avenue	Granted	May 21, 1928
19787	14603	Southern Pacific Company (County of Imperial)	Near Colorado Station	Granted	May 22, 1928
19788	14692	The Atchison, Topeka and Santa Fe Railway Company (City of Oakland)	Wood Street	Granted	May 22, 1928
19797	14572	Southern Pacific Company (City of Oakland)	Ettie Street	Granted	May 23, 1928
19802	14305	County of Placer (Southern Pacific Company)	West of Loomis Station	Denied	May 23, 1928
19804	14638	City of San Diego (San Diego Electric Electric Railway Company)	Midway Drive and Newark Street	Granted	May 23, 1928
19806	14576	County of Monterey (Pajaro Valley Consolidated Railroad Company)	Monterey-Castroville Road	Granted	May 24, 1928

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19807	14655	Southern Pacific Company (County of Santa Cruz)	Vicinity of Watsonville	Granted	May 24, 1928
19813	14575	County of Monterey (Pajaro Valley Consolidated Railroad Company)	Vicinity of Pajaro	Granted	May 26, 1928
19815	11353	Southern Pacific Company (City and County of San Francisco)	Berry Street	Granted	May 26, 1928
19818	14537	County of Kern (The Atchison, Topeka and Santa Fe Railway Company)	Sec. 9, T 28 S., R. 25 E., M. D. M.	Granted	May 28, 1928
19830	14710	Southern Pacific Company (County of Placer)	Tahoe City	Granted	May 29, 1928
19839	14577	County of Riverside (The Atchison, Topeka and Santa Fe Railway Company)	East Sixth Street	Granted	May 29, 1928
19840	14580	County of Riverside (Pacific Electric Railway Company)	East Sixth Street	Granted	May 29, 1928
19841	14634	The Atchison, Topeka and Santa Fe Railway Company (City of Corona)	Pearl and Joy Streets	Granted	May 29, 1928
19844	14698	County of Los Angeles (Pacific Electric Railway Company)	Roosevelt Avenue (pedestrian)	Granted	May 29, 1928
19851	14490	The Atchison, Topeka and Santa Fe Railway Company (City of Los Angeles)	Slauson Avenue	Granted	June 1, 1928
19863	14727	The Western Pacific Railroad Company (City of Oakland)	East Eighth Street and Twelfth Avenue	Granted	June 7, 1928
19865	14643	County of Tulare (Visalia Electric Railroad Company)	First Street	Granted	June 8, 1928
19866	14722	Southern Pacific Company (City of Madera)	Olive Avenue	Granted	June 8, 1928
19867	14723	Southern Pacific Company (County of Stanislaus)	Vicinity of Turlock	Granted	June 8, 1928
19868	14738	Southern Pacific Company (County of Kern)	Mt. Vernon Avenue, vicinity of Bakersfield	Granted	June 8, 1928
19869	14733	Southern Pacific Company (City of Turlock)	Alley between Blocks 208 and 209	Granted	June 8, 1928
19881	14761	Southern Pacific Company (Contra Costa County)	Brentwood	Granted	June 12, 1928
19882	14764	The Western Pacific Railroad Company (City and County of San Francisco)	Potrero Avenue	Granted	June 12, 1928
19887	14739	Southern Pacific Company (City and County of San Francisco)	Carroll Avenue	Granted	June 13, 1928
19895	14776	Southern Pacific Company (City of Berkeley)	Overland Avenue and portion of Ashby Avenue	Granted	June 13, 1928
19896	14769	Southern Pacific Company (City of King)	Pearl Street	Granted	June 14, 1928
19897	14770	Southern Pacific Company (City of San Jose)	Autumn Street	Granted	June 14, 1928
19901	14775	Southern Pacific Company (County of San Mateo)	Front and Cedar Streets and Cypress and San Mateo Avenues	Granted	June 19, 1928
19905	14709	Southern Pacific Company (County of Amador)	Vicinity of Carbondale Station	Granted	June 20, 1928
19910	14696	County of Sacramento (Sacramento Northern Railway)	Rancho Del Paso (pedestrian)	Granted	June 20, 1928
19912	14788	City of Oakland (San Francisco-Sacramento Railroad Company)	Thorn Road (undergrade)	Granted	June 21, 1928

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TABLE E—MISCELLANEOUS AND SUPPLEMENTAL ORDERS

Dec. No.	App. No.	Applicant	Nature of proceedings	Date
19187	11124	Clement C. Floersch	Supplemental order revoking and annulling certificate to operate auto truck service between San Ysidro, Nestor, Aztec City and Imperial Beach districts and San Diego (Decision No. 15532)	Dec. 23, 1927
19188	12513	Southern Pacific Company	First supplemental order amending Decision No. 16221, grade crossing of Harrison Street and Seventeenth Street, city and county of San Francisco, and adding crossover track	Dec. 23, 1927
19193	13914	Los Angeles County Water Works	Denying petition for rehearing—transfer of system to Gardena Valley Water Company	Dec. 23, 1927
19196	14265	The American Railway Express Company	Granting permission to abandon agency at station of Twain, Plumas County, and to continue same as non-agency station	Dec. 30, 1927
19198	10649	Los Angeles Junction Railway Company	First supplemental order authorizing construction of second track at grade across spur track of The Atchison, Topeka and Santa Fe Railway Company and across Forth-sixth Street in city of Vernon	Dec. 30, 1927
19210	3258	San Diego and Arizona Railway Company	Supplemental order revoking and annulling certificate to operate auto stage service between Lakeside and Julian, via Ramona (Decision No. 4824)	Jan. 3, 1928
19211	9315	Casper Cautiello	Supplemental order revoking and annulling certificate to operate auto stage service between Pittsburg and Avon	Jan. 3, 1928
19213	13393	Pasquale Calcagno	Supplemental order revoking and annulling certificate to operate auto passenger or freight line between Bradley and Bryson and intermediate points (Decision No. 17804)	Jan. 3, 1928
19218	13965	C. J. Backus and Sons	Granting increase in water rates for service in Tract No. 4613, Los Angeles County	Jan. 9, 1928
19219	14284	Riverbank Water Company	Granting authority to transfer water system to C. E. Capps	Jan. 9, 1928
19222	13785	Spring Valley Water Company	Second supplemental order amending Decision No. 18577—exchange of certain lands with Meyer Brothers	Jan. 9, 1928
19223	12713	Sunland Rural Telephone Company	Third supplemental order authorizing use of proceeds from issue and sale of stock (Decision No. 16572)	Jan. 9, 1928
19226	12437	Alameda Transportation Company	Second supplemental order amending Decision No. 16211 to permit operation of vessel "Four Sisters" while "Jessie Matson" is in dry dock for necessary repairs	Jan. 9, 1928
19227	11349	The Atchison, Topeka and Santa Fe Railway Company	Order revoking prior order and dismissing application—grade crossing, Quint, R and S Streets, San Francisco (Decision No. 15880)	Jan. 9, 1928
19246	14289	Southern Pacific Company	Granting permission to close agency at Station of Pitt, Shasta County, provided non-agency service is continued at that point	Jan. 11, 1928
19249	14204	Spring Valley Water Company	First supplemental order permitting amendment of collateral trust agreement (Decision No 19126)	Jan. 11, 1928
19250	13879	Edw. H. White	Denying petition of California Transport Company, Sacramento Navigation Company and Erikson Navigation Company for rehearing, but amending Decision No. 18788 so as to exclude under such certificate operation to or from the cities of Sacramento and Stockton	Jan. 11, 1928
19251	1351	Board of Supervisors of Fresno County	Order revoking prior order to widen and pave crossing of Isabella Street over tracks of Southern Pacific Company and dismissing application (Decision No. 15931)	Jan. 11, 1928
19252	10964	County of Riverside	Order revoking prior order to construct grade crossing over tracks of Southern Pacific Company and dismissing application (Decision No. 14976)	Jan. 11, 1928

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19253	11353	Southern Pacific Company	Order revoking prior order to construct two spur tracks across a portion of Berry Street in city and county of San Francisco, and dismissing application (Decision No. 15170)	Jan. 11, 1928
19254	12682	County of Tulare	Order revoking prior order to construct grade crossing near station of Kingsburg and dismissing application (Decision No. 17608)	Jan. 11, 1928
19255	14321	Key System Transit Company	Authorized to discontinue operation for period of 60 days street railway service over portion of so-called San Jose Avenue line and High Street line, and to substitute motor bus service	Jan. 12, 1928
19257	14325	City of South San Francisco and Pacific Water Company	Fixing rates for municipal fire hydrant rental	Jan. 16, 1928
19258	5097	San Francisco-Richmond Ferry Company	Supplemental opinion and order authorizing distribution of remaining funds which have been impounded with Wells Fargo Bank and Union Trust Company	Jan. 17, 1928
19260	13983	Erikson Navigation Company	First supplemental order authorizing acquisition of operative right and equipment to operate vessels from H. A. and Fred F. Ball	Jan. 18, 1928
19263	13845	Pacific Electric Railway Company	Authorizing certain exemptions from General Order No. 75	Jan. 20, 1928
19264	14249	The Atchison, Topeka and Santa Fe Railway Company	Authorized to abandon agency at station of Devore, San Bernardino County, provided service will be continued by means of non-agency station	Jan. 20, 1928
19265	14276	Northwestern Pacific Railroad Company	Granting authority to abandon and remove spur track at Singley .8 of mile east of Fernbridge in Humboldt County	Jan. 20, 1928
19266	14299	The Atchison, Topeka and Santa Fe Railway Company	Granting authority to make temporary changes in and to the interlocking plant at Orwood, Contra Costa County	Jan. 20, 1928
19267	13695	California Transit Company, Kern County Transportation Corporation and Boyd and Mattly Stage Line	Authorized in supplemental order to modify lease (Decision No. 18280)	Jan. 20, 1928
19273	4209	Samuel Pinches	Supplemental order revoking and annulling certificate to operate auto passenger and property service between Longvale and Branscomb and intermediate points (Decision Nos. 5963 and 5923)	Jan. 20, 1928
19274	5845	Samuel Pinches	Supplemental order revoking and annulling certificate to operate auto passenger and property service between Laytonville and Cummings (Decision No. 7888)	Jan. 20, 1928
19279	14343	Mt. Shasta Power Corporation and McCloud River Lumber Company	Approving ten-year contract for sale and purchase of energy	Jan. 23, 1928
19283	14224	The Southern Sierras Power Company	Denying petition for rehearing of application to issue and sell $2,000,000 seven per cent preferred stock. The Commission previously dismissed the application holding that it had no jurisdiction over such an issue of securities, applicant being a corporation organized under the laws of the state of Wyoming	Jan. 23, 1928
19285	14269	Miller and Lux, Inc.	Authorized to sell certain warehouse properties located in city of Los Banos, Merced County, to Los Banos Lumber and Supply Company for the sum of $14,000	Jan. 23, 1928
19286	14271	San Jose Water Works	Authorized to grant to Pacific Gas and Electric Company right of way for pole line purposes in county of Santa Clara	Jan. 23, 1928
19288	14237	The Atchison, Topeka and Santa Fe Railway Company	Granting permission to reconstruct Colton interlocking plant so that plant will fit into and become part of automatic block signal installation between cities of Colton and San Bernardino	Jan. 23, 1928
19293	13837	Peerless Stages, Incorporated	Second supplemental order modifying Decision No. 18775 to permit use of $62,000 derived from sale of stock for purchase of equipment	Jan. 23, 1928
19294	14309	Southern Pacific Company	Authorized to relocate shelter shed at non-agency station of Hall, Alameda County	Jan. 23, 1928
19297	C2195	P. F. Lande, Mrs. E. Bauman, R. H. Morgan, Robert C. Cash vs. The Napa Ranch, W. G. Grove, Supt., W. J. Hotchkiss, owner	Denying petition of defendant for rehearing	Jan. 28, 1928

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TABLE E—MISCELLANEOUS AND SUPPLEMENTAL ORDERS—Continued

Dec. No.	App. No.	Applicant	Nature of proceedings	Date
19303	12160	David Easdale	First supplemental order revoking and annulling certificate to operate passenger boat on Russian River (Decision No. 15894)	Jan. 31, 1928
19310	14164	Leland S. Green	Authorized to sell to George H. and Cyril E. Jones the Tuolumne Telephone Exchange	Feb. 6, 1928
19313	14242	J. L. Harris (Aukum Telephone Line)	Authorized to discontinue public utility telephone service in El Dorado County	Feb. 6, 1928
19316	14370	Campbell Water Company	Authorized to issue unsecured seven and one-half per cent promissory note for $8,000, to finance construction costs	Feb. 6, 1928
19320	C2457	Modesto Packing Company vs. Modesto and Empire Traction Company and The Atchison, Topeka and Santa Fe Railway Company	Defendants directed to refund to complainant all charges collected in excess of $25.00 per 36-foot car for transportation of cattle from Merced to Modesto during April and May and October, 1926	Feb. 6, 1928
19321	C2459	Essex Lumber Company vs. Yosemite Valley Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Central California Traction Company et al	Defendants directed to refund to complainant all charges collected in excess of 17½ cents per 100 pounds for transportation of 96 carloads of cedar pencil slabs from Merced Falls to Swanston during period from December 15, 1925 to April 20, 1927	Feb. 6, 1928
19322	C2468	Shell Company of California vs. Southern Pacific Company and The Western Pacific Railroad Company	Defendants directed to refund to complainant all charges collected in excess of 17½ cents per 100 pounds on two carloads of fuel oil moved from Martinez to Oroville during June and October, 1926	Feb. 6, 1928
19323	14239	Tulare Lake Dredging Company	Authorized to sell warehouse properties to H. S. Brietigam and Rasmus Knudsen for $20,000, located at Guernsey, Kings County	Feb. 6, 1928
19326	14282	American Railway Express Company	Granting permission to abandon agency at station of Waukena, Tulare County, provided service is continued by means of non-agency station	Feb. 6, 1928
19327	14283	Southern Pacific Company	Authorized to remove team track in vicinity of San Fernando road and Elm Street at Taylor station to location in vicinity of San Fernando Road and Twentieth Avenue at said station	Feb. 6, 1928
19328	14302	Southern Pacific Company	Authorized to remove freight shed and platform at former non-agency station of Venice Hill, Tulare County	Feb. 6, 1928
19332	14326	American Railway Express Company	Authorized to abandon agency at station of Pitt, Shasta County, provided service is continued by means of non-agency station	Feb. 6, 1928
19334	14327	American Railway Express Company	Authorized to abandon agency at station of Bully Hill, Shasta County	Feb. 6, 1928
19335	14328	Southern Pacific Company and Nevada-California-Oregon Railway	Granting permission to relocate station facilities and tracks in vicinity of Wendel, Lassen County	Feb. 6, 1928
19337	14345	Suisun and Green Valley Telephone Company	Authorized to make effective a rate of $1.00 per month for business or residence extension service with wall telephone set, and a rate of $1.25 per month for business or residence extension service with desk telephone set, on and after March 1, 1928	Feb. 6, 1928
19338	14348	Southern Pacific Company	Authorized to close agency at station of Summit, Placer County, and to continue service by means of non-agency station	Feb. 6, 1928
19339	4021	H. A. Condra	Supplemental order revoking and annulling certificate to operate auto passenger service between Los Alamitos and Seal Beach, Orange County	Feb. 6, 1928

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19340	14285	Key System Transit Company	First supplemental order amending motor bus route in city of Oakland, (Decision No. 19127)	Feb. 6, 1928
19341	10952	W. H. Pimentel	Supplemental order granting permission to re-route auto stage service between Sacramento and Martin's Store (Decision No. 14738)	Feb. 6, 1928
19342	11866	E. D. McDonald	Supplemental order revoking and annulling certificate to operate auto trucking service between San Francisco and Oakland, Berkeley, Emeryville, Piedmont and Eden Township (Decision No. 16393)	Feb. 6, 1928
19346	14170	Southern Pacific Company	Authorized to discontinue certain passenger train services, including Trains Nos 39, 48, 63-64, 65-66, 90-99, 97-98, 91 and 92	Feb. 7, 1928
19349	13845	Pacific Electric Railway Company	Authorizing certain exemptions from General Order No.75 on its Shorb line	Feb. 8, 1928
19350	14133	Southern Pacific Company	Authorizing certain exemptions from General Order No. 75 at certain crossings in cities of Oakland, Berkeley, Albany, Emeryville, Alameda and San Leandro	Feb. 8, 1928
19351	13701	Southern Pacific Company	First supplemental order authorizing change of grade of double track crossing on Shattuck Avenue line in city of Berkeley at The Alameda and Solano Avenue and to change same from double track to single track crossing, and also to make similar change of double track Ninth Street line across tracks of Key System Transit Company, and also double track crossing of Ninth Street line across tracks of Santa Fe near Masonic and Solano Avenues in city of Albany (Decision No. 18346)	Feb. 8, 1928
19352	14227	Pacific Electric Railway Company	Authorized to abandon and relocate two sections of its Watts-Redondo line, Los Angeles County	Feb. 8, 1928
19353	13951	Home Telephone Company of Covina	Order denying petition for rehearing of application to purchase Follows Toll Line	Feb. 9, 1928
19355	14277	Northwestern Pacific Railroad Company	Granting permission to abandon and remove spur track known as Morgan, one mile west of Sequoia station, Humboldt County	Feb. 15, 1928
19356	14346	Southern Pacific Company	Granting permission to exchange certain parcel of land with Cutter Laboratory located in the vicinity of Fourth and Parker Streets, city of Berkeley	Feb. 15, 1928
19357	14375	The Western Pacific Railroad Company and Stockton Feed Yards	Approving lease by former to latter of certain property for period of 25 years	Feb. 15, 1928
19358	13820	Smith River Power Company	First supplemental order granting certificate to operate electric and water utilities in Del Norte County (Decision No. 18818)	Feb. 15, 1928
19361	14321	Key System Transit Company	Authorized to re-establish street railway service on portions of its San Jose Avenue and High Street lines in the city of Alameda, which was authorized to be discontinued during 90-day experimental period for the operation of motor buses in place of such street railway service	Feb. 15, 1928
19365	14298	Yosemite Valley Railroad Company	Permission granted to close agency station of Barrett, Mariposa County	Feb. 15, 1928
19366	14315	American Railway Express Company	Granting permission to abandon agency at station of Barrett, Mariposa County, and to continue same as non-agency station	Feb. 15, 1928
19368	5270	F. A. Hodges	Supplemental order revoking and annulling certificate to operate auto freight service between San Juan and San Jose (Decision No. 7300)	Feb. 15, 1928
19378	C2486	A. Wainwright	Revoking certificate to operate auto truck service between Oakland and San Francisco, on the one hand, and Turlock, on the other hand	Feb. 17, 1928
19379	14222	San Diego and Arizona Railway Company	Authorized to discontinue separate passenger train service on its Lakeside Branch, and to substitute mixed train service to operate on Monday, Tuesday, Thursday and Saturday of each week	Feb. 17, 1928
19388	14275	Dealers Transportation Company and C. F. Christensen	Former, operating vessels between Sacramento, Stockton, San Francisco, Oakland, and intermediate points for the transportation of freight, authorized to discontinue said service and transfer said operative rights and property to latter, who will operate same	Feb. 20, 1928

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TABLE E—MISCELLANEOUS AND SUPPLEMENTAL ORDERS—Continued

Dec. No.	App. No.	Applicant	Nature of proceedings	Date
19389	C2458	The Charles Nelson Company, Northern Redwood Lumber Company vs. Northwestern Pacific Railroad Company and The Arcata and Mad River Railroad Company	Ordering defendant companies to refund to complainants all charges collected in excess of 22½ cents per 100 pounds for transportation of lumber and forest products moved from Korbel to Tiburon, Mill Valley, Sausalito, Fairfax, Shellville Junction, Sebastopol, etc., during May 21, 1925 to June 3, 1926	Feb. 20, 1928
19391	14255	County of Los Angeles and Belvedere Water Corporation	Authorizing latter to grant to former perpetual easement and right of way over and across certain strip of land in Tract No. 2553	Feb. 20, 1928
19392	14256	County of Los Angeles and Belvedere Water Corporation	Authorizing latter to grant to former perpetual easement and right of way over and across certain strip of land in Tract No. 4190	Feb. 20, 1928
19393	14338	The Fresno Interurban Railway Company, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company	Approving agreement covering lease by two latter companies for joint use of facilities of former company	Feb. 20, 1928
19394	14376	The Western Pacific Railroad Company and Southern Pacific Company	Approving agreement for joint use of certain tracks at Ortega, San Joaquin County	Feb. 20, 1928
19403	14344	California Telephone and Light Company and The Oaks Light and Power Company	Approving agreement for the supplying of electric energy by the former to the latter for a period of five years	Feb. 25, 1928
19407	14367	Southern Pacific Company	Granting permission to abandon agency at station of Army Point, Solano County	Feb. 25, 1928
19408	3708	City of Palo Alto	Ninth supplemental order granting extension of time until June 30, 1928, for the maintenance of grade crossing at intersection of Palo Alto Avenue and Alma Street over Southern Pacific Company tracks	Feb. 25, 1928
19409	13834 13835	F. W. Gomph, as agent Southern Pacific Company	Order cancelling the reopening of applications, Coast Rock and Gravel Company having notified the Commission that a satisfactory adjustment of the matters involved had been made	Feb. 25, 1928
19416	14013	Coast Telephone Company	Supplemental order establishing rates for service at Morro Bay exchange, San Luis Obispo	Feb. 28, 1928
19431	14411	Southern Pacific Company	Authorized to move and relocate freight and passenger station building at Beresford, San Mateo County	Mar. 2, 1928
19432	4386	Tonopah and Tidewater Railroad Company (Los Angeles and Salt Lake Railroad Company)	Order revoking prior order and dismissing application to abandon interlocking plant at Crucero Station, San Bernardino County	Mar. 2, 1928
19437	C2441	Herbert B. Howard, Chas. L. Overshiner et al vs. Southern California Telephone Company and The Pacific Telephone and Telegraph Company	Ordering Southern California Telephone Company to extend its Los Angeles exchange area to the territory north of Wawona Street in city of Los Angeles, now served by The Pacific Telephone and Telegraph Company through its Glendale exchange	Mar. 3, 1928

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19438	14354	Pacific Electric Railway Company	Granting authority to abandon and remove spur track near Figueroa Street, Los Angeles, on Watts-Redondo Line	Mar. 3, 1928
19442	12203	L. P. Megugorac and Leo Perich	Supplemental order revoking and annulling certificate to operate auto truck service between Santa Monica and points in southern California within radius of 150 miles thereof (Decision No. 16537)	Mar. 3, 1928
19445	14332	Southern California Edison Company	First supplemental order amending Decision No. 19413—purchase of 2,000 shares of common capital stock of Ojai Power Company	Mar. 9, 1928
19450	14251	Anderson Transportation Company	Authorized to sell and transfer operative rights for transportation of freight on inland waters of California to Denis O'Donoghue, E. H. Warren and D. L. Peters, a co-partnership	Mar. 10, 1928
19460	14401	East Bay Water Company	Authorized to sell right of way to city of Oakland for re-routing portion of proposed road	Mar. 10, 1928
19463	5417 6621	George W. Johnson and J. M. Johnson George W. Johnson and J. M. Johnson	Supplemental order revoking certificates to operate auto stage service between Cloverdale and Navarro and Geyserville (Decisions Nos. 7393 and 9027)	Mar. 10, 1928
19464	12833	Willard F. Smith (Capay Valley Telephone System)	Supplemental order authorizing rates placed in effect, which were heretofore authorized contingent upon certain improvements being made in service—Yolo County	Mar. 10, 1928
19465	9962	A. G. Newcomer	Supplemental order revoking and annulling certificate to operate auto freight service between Redding, Shasta County, and end of road on Coffee Creek, Trinity County (Decision No. 14114)	Mar. 10, 1928
19468	13779	Enrico N. Cuneo and White Brothers	Supplemental order amending Decision No. 18387—transfer of auto passenger and freight line between Jackson, Pine Grove and Volcano	Mar. 12, 1928
19470	14258	Sanger Telephone Company	Authorized to place in effect April 1, 1928, charges for moves and changes in location and type of telephone equipment	Mar. 12, 1928
19473	14418	The California Oregon Power Company	Authorized to purchase electric system of City of Riddle, Oregon, for sum of $4,500 and to merge same with its own system	Mar. 12, 1928
19475	3037 9990 13694	Los Angeles and Salt Lake Railroad Company Los Angeles and Salt Lake Railroad Company Southern Pacific Company	Supplemental order modifying Decision No. 19276—protection of grade crossings, Ninth Street, Los Angeles	Mar. 12, 1928
19477	C2425	California Transit Company vs. Auto Tours Continental Club, Auto Tourists Cooperative Club, A. H. Wycoff et al	Order denying defendants' petition for rehearing of recent decision which ordered certain non-certificated stage lines to cease operations	Mar. 12, 1928
19478	14132	City of Marysville	Order denying Southern Pacific Company's petition for rehearing of application of city of Marysville to the Commission to order alteration of existing grade crossing at B Street in said city	Mar. 12, 1928
19479	13647 13708	Sierra Railway Company of California R. E. O'Brien and W. E. Grant	Order denying petition of R. E. O'Brien and W. E. Grant for rehearing of their application to operate motor truck service between Oakdale and Tuolumne with service to Keystone, Jamestown and other points intermediate to Tuolumne	Mar. 12, 1928
19481	14300	Southern Pacific Company	Authorizing certain exemptions from Section V-a of General Order No. 75 at crossings in city of Los Angeles	Mar. 16, 1928
19482	14398	Pacific Electric Railway Company	Granting permission to abandon freight platform at Bingham, Los Angeles County	Mar. 16, 1928
19485	14408	Pacific Electric Railway Company	Granting permission to abandon freight platform at Bangle, Los Angeles County	Mar. 16, 1928
19487	14429	Pacific Electric Railway Company	Granting authority to reconstruct its double track Covina line in and along Badillo Avenue between Fourth Street and Hollenbeck Avenue in city of Covina, Los Angeles County, with side clearnaces less than those prescribed in Commission's General Order No. 26-C	Mar. 16, 1928
19488	14448	San Diego County	Authorized to abandon and close crossing of Twenty-first Street at grade across tracks of The Atchison, Topeka and Santa Fe Railway Company in vicinity of Del Mar	Mar. 16, 1928

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TABLE E—MISCELLANEOUS AND SUPPLEMENTAL ORDERS—Continued

Dec. No.	App. No.	Applicant	Nature of proceedings	Date
19489	14451	Pacific Electric Railway Company	Granting authority to abandon and remove portion of storage track at Craven Avenue in city of Torrance, Los Angeles County	Mar. 16, 1928
19491	13647	Sierra Railway Company of California	Supplemental order clearly defining auto truck service via Collegeville and Valley Home of operations between Stockton and Sonora and intermediate points east of Oakdale (Decision No. 19306)	Mar. 16, 1928
19492	14252	Flintridge Motor Company	Supplemental order revoking certificate to operate auto stage service between intersection of St. Katherine's Drive and Inverness Drive and Flintridge Hotel, Los Angeles County	Mar. 16, 1928
19493	13097	D. C. Porter, E. A. Montgomery and F. H. Gottwals, co-partners	Supplemental order revoking certificate to operate auto passenger service between depot of The Atchison, Topeka and Santa Fe Railway Company at Riverside and depot of same company at San Bernardino, applicants not now operating as public utility (Decision No. 17395)	Mar. 16, 1928
19494	14466	Cement, Tolenas and Tidewater Railroad Company	Granting authority to discontinue operation of passenger trains between towns of Tolenas and Cement, Solano County	Mar. 19, 1928
19498	9461	County of Santa Clara	First supplemental order authorizing removal of automatic flagman at Kifer crossing to another location (Decision No. 12881)	Mar. 20, 1928
19499	13195	Roy D. Rice	Supplemental order granting permission to discontinue passenger service between Maxwell and Stonyford (Decision No. 17458)	Mar. 20, 1928
19500	13607	Southern Pacific Company	First supplemental order granting permission to abolish crossings at Cattlemen's Lane (Decision No. 18182) when crossings authorized in Decision No. 19282 and No. 19417 are constructed	Mar. 20, 1928
19501	13682	I. J. McIntire	Supplemental order revoking certificate to operate auto truck service between vicinity of Long Beach and Long Beach (Decision No. 18405)	Mar. 20, 1928
19502	13601	Southern Pacific Company	Order revoking prior order and dismissing application to construct spur track across Third Street in city of El Centro (Decision No. 18143)	Mar. 20, 1928
19503	12609	Southern Pacific Company	Order revoking prior order and dismissing application—grade crossing at Vesper and Aetna Streets, vicinity of Van Nuys station, city of Los Angeles (Decision No. 16423)	Mar. 20, 1928
19510	12685	Fred Duffy	Supplemental order revoking certificate to operate auto stage service between Point Arena and Devilbiss Ranch (Decision No. 16877)	Mar. 21, 1928
19511	13867	City of Lodi	First supplemental order amending Decision No. 18803—grade crossing at California Street	Mar. 21, 1928
19512	8908	Ross Forsyth	Supplemental order revoking and annulling certificate to operate auto freight and passenger service between Fresno and Camp No. 2 and intermediate points, and passengers only between Sanger and Junction Camp	Mar. 22, 1928
19513	C2407	Coronado Transfer, Pacific Transfer Van and Truck Company et al. vs. United Parcel Service of San Diego	Order denying petition of plaintiffs for rehearing; the Commission previously held that defendant company was operating as a private carrier	Mar. 22, 1928
19514	14366	Clayton E. Comstock	Granting authority to discontinue water service in Tract No. 8741, Los Angeles County	Mar. 22, 1928

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19519	C2405	Motor Service Express, San Bernardino Transportation Company, Pacific Motor Express, and Los Angeles and Newport Freight Line vs. Adam Baker (Belt Line Express)	Order denying defendants' petition for rehearing or modification of Decision No. 19396	Mar. 23, 1928
	C2410	Motor Service Express et al. vs. S. B. Cowan and Adam Baker		
19520	13778	San Joaquin and Kings River Canal and Irrigation Company, Inc., and San Joaquin River Water Storage District	Denying petition of T. L. Baldwin et al, protestants, for rehearing	Mar. 23, 1928
19526	14285	Key System Transit Company	Authorized to abandon street car service on its Rockridge Line in city of Oakland, and to substitute motor bus service therefor	Mar.29, 1928
19532	C2503	California Petroleum Corporation vs. Southern Pacific Company	Directing defendant company to refund to complainant all charges collected in excess of 36 cents per 100 pounds for the transportation of 17 carloads of gasoline shipped from Thenard to Oakland and San Francisco during period from January 30 to March 30, 1926, inclusive	Mar. 30, 1928
19533	14502	Valley Telephone Company	Granting permission to issue promissory note in sum of $900, payable on or before four years after date, with interest at not exceeding 10 per cent per annum	Mar. 30, 1928
19536	14491	Sidney B. and Lucy W. Wood	Authorized to sell water system known as Tarr Ditch serving Nevada and Yuba Counties to Nevada Irrigation District	Mar. 30, 1928
19538	14287	Feather River Power Company	First supplemental order granting permission to issue and sell at not less than 90 per cent of par value $298,500 of Class "B" preferred stock for the purpose of financing cost of construction on Buck's Creek power project	Mar. 30, 1928
	14303	Feather River Power Company		
19553	14460	American Railway Express Company	Authorized to abandon agency at Cement, Solano County	April 2, 1928
19557	C2394	Bakersfield and Los Angeles Fast Freight Company and Los Angeles and West Side Transportation Company vs. Walter Willhour and Willhour Truck Company	Supplemental order canceling tariffs and time schedules filed by Walter Willhour	April 2, 1928
19558	3683	Christ and Nick Stavros	Supplemental order revoking certificate to operate auto stage service between Merced and Merced Falls (Decision No. 5417)	April 2, 1928
19559	8286	Ira S. Newlan	Supplemental order revoking certificate to operate auto stage service between Bishop and Laws (Decision No. 11083)	April 2, 1928
19560	14275	Dealers Transportation Company and C. F. Christensen	First supplemental order modifying Decision No. 19388 so as to permit Dealers Transportation Company to transfer its properties for $27,500 to Rio Vista Light-erage Company, Inc., instead of to C. F. Christensen	April 2, 1928
19563	C2176	F. W. Gomph, agent, on behalf of carriers	Opinion and order denying petition of respondents for rehearing and affirming Decision No. 17175—switching charge at interchange points	April 2, 1928
19567	14184	Pacific Gas and Electric Company	Order denying petition of Alameda County Gas Company for rehearing of Decision No. 19444—gas service in Mt. Eden, Alvarado, Centerville, Newark, Niles, Irvington, Warm Springs, Mission San Jose, Decoto	April 7, 1928
	14233	Alameda County Gas Company		
19569	14495	Ed Fletcher (Sherman Water Company) and Title Insurance and Trust Company	Supplemental order amending Decision No. 19523—grant deed	April 9, 1928
19570	14365	San Diego Electric Railway Company	Granting permission to abandon street railway service along First Street between B and Laurel Streets in city of San Diego, and to substitute motor bus service therefor with about 10 minute headway	April 9, 1928
19572	14525	Southern California Edison Company	Approving agreement with Twin Lakes Park Company, Inc., for service of electric energy for period of three years to mountain resort properties in hills west of San Fernando Valley, Los Angeles County	April 9, 1928
19574	5269	United Stages, Inc.	Order denying petition of Pacific Electric Railway Company for rehearing of recent order granting certificate to Pickwick Stages System to operate auto passenger service between Los Angeles, Culver City and Venice	April 9, 1928
	10406	Pacific Electric Railway Company		

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TABLE E—MISCELLANEOUS AND SUPPLEMENTAL ORDERS—Continued

Dec. No.	App. No.	Applicant	Nature of proceedings	Date
19578	10236	J. A. Rogers	Supplemental order revoking certificate to operate auto truck service between Bartle, Siskiyou County, and MacArthur, Shasta County, via Glenburn and Fall River Mills (Decision No. 14145)	April 10, 1928
19582	14452	Southern Pacific Company	Granting permission to abandon non-agency station of Plantel in Santa Clara County	April 10, 1928
19583	12092	Inglewood Transfer and Storage Company	Supplemental order revoking certificate heretofore granted to Mary K. Lewis to operate auto truck service between Los Angeles and Inglewood, (Decision No. 17605)	April 10, 1928
19584	14396	Robert Gallegos	Authorized to place in effect April 30, 1928, a new schedule of rates for water service in Mission San Jose and vicinity	April 10, 1928
19585	14585	Daisy Noel (Lomita Park Water Works)	Authorized to place in effect rates for fire hydrant rental on and after May 31, 1928	April 12, 1928
19588	14094	Stockton and Mokelumne Canal Company and Woodbridge Irrigation District	First supplemental order revising previous order (Decision No. 19242) authorizing former to sell to latter its properties for the sum of $250,000 to provide for a consideration of $246,404	April 13, 1928
19593	14515	Southern Pacific Company	Granting permission to abandon non-agency station of Shellmound Park, Alameda County	April 13, 1928
19595	9724	Long Beach Transfer and Warehouse Company	Supplemental order revoking certificate to operate auto truck service between Los Angeles and Long Beach (Decision No. 14839)	April 13, 1928
19598	14210	Bay Shore Freight Lines	Granting certificate to extend present boat service, exclusive of truck service, between San Francisco, Oakland and Alameda, on the one hand, and the Port of Redwood City in San Mateo County, on the other hand	April 13, 1928
19599	14430	Monroe, Lyon and Miller, Inc., et al	Authorized to transfer to Aptos Water Company the public utility water system serving consumers on the Aptos Ranch and adjoining subdivisions, Santa Cruz County	April 13, 1928
19601	12731	George W. and Bertha F. Johnstone	Authorized to transfer telephone utility properties operating under the name of Bass Telephone Lines, serving Bella Vista, Buckeye, Palo Cedro, Stillwater, Millville, Fern, Ingot, Bend, Round Mountain, Montgomery Creek, Wengler, Burney and Carbon, Shasta County, with connections to outside points through Redding and Fall River Mills for sum of $20,000, to W. E. Hills	April 13, 1928
19604	14213	Nevada, California and Oregon Telegraph and Telephone Company	Authorized to operate service between Westwood and Carbon, Shasta County, to connect with system of Bass Telephone Lines	April 13, 1928
19607	14424	Southern Pacific Company	Granting permission to increase rate on crushed rock, gravel and sand from Thomasson to Marcuse, Wilson, Tudor, Abbott and Oswald from 3½ cents to 4 cents per 100 pounds. The published rate of 3½ cents was due to an error, the Commission found	April 13, 1928
19614	14592	Key System Transit Company	Granting authority to abandon street car service on Ashby Avenue from San Pablo to Hillegass Avenue, and along Hillegass Avenue to Russell Street, and thence to Hotel Claremont in city of Berkeley, and to substitute motor bus service therefor	April 14, 1928
19615	14132	City of Marysville	Order denying petition of Southern Pacific Company for rehearing of city's application to alter crossing at B Street in said city	April 14, 1928
19620	14498	Albert Brown and Clyde W. Henry	Former authorized to sell to latter electric light plant at Point Arena, Mendocino County, for sum of $1,400	April 17, 1928
19627	14574	Charles Gulling and Portola Water Company	Former authorized to transfer to latter water system serving town of North Portola, Plumas County	April 18, 1928

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19628	14458	Thomas R. Laffoon (Cottonwood Water Works)	Authorized to transfer to Agnes L. Armentrout water system serving town of Cottonwood, Shasta County	April 18, 1928
19629	14518	Fortuna Water Company	Authorized to transfer water system to Town of Fortuna, Humboldt County	April 18, 1928
19631	14567	Southern Pacific Company	Granting permission to abandon non-agency station of Gunter in Placer County	April 18, 1928
19632	14227	Pacific Electric Railway Company	First supplemental order granting authority to construct additional main track at grade across Electric Street in county of Los Angeles	April 18, 1928
19633	C2423	Hunt Brothers Packing Company vs. Southern Pacific Railroad Company and Modesto and Empire Traction Company	Supplemental order amending previous order to provide reparation on 26 carloads of fresh fruit moved from Empire to Hayward during August, 1926, instead of 25 carloads	April 18, 1928
19635	12515	County of Los Angeles	Order revoking prior order and dismissing application—grade crossing over right of way of Pacific Electric Railway Company at Jefferson Boulevard	April 19, 1928
19641	14449	William Peck and Herbert E. Culler (Haddock Villa Water System)	Authorized to transfer water works in Los Angeles County to S. G. Goucher	April 20, 1928
19646	14468	East Bay Water Company	Authorized to sell certain property adjoining Upper San Leandro reservoir to County of Alameda	April 20, 1928
19654	14264	Los Angeles Railway Corporation	Order modifying original order in Decision No. 19471—extension of Melrose Avenue bus line in county of Los Angeles	April 21, 1928
19656	13460 C2476	Pacific Electric Railway Company Venice Branch of Los Angeles Chamber of Commerce vs. Pacific Electric Railway Company	Order denying petition of City of Los Angeles for rehearing of Decision No. 19566—revision of rates of Pacific Electric Railway Company, thereby making it possible for new, reduced rates to become effective April 27, 1928	April 23, 1928
19658	13460 C2476	Pacific Electric Railway Company Venice Branch of Los Angeles Chamber of Commerce vs. Pacific Electric Railway Company	Order denying petition of Venice Branch of Los Angeles Chamber of Commerce for rehearing of decision revising rates of Pacific Electric Railway Company	April 23, 1928
19659	14438	Aptos Water Company	Authorizing issue at not less than par of $51,000 of common capital stock and denying without prejudice permission to issue $198,997 of common stock	April 23, 1928
19662	3139	The Western Pacific Railroad Company	Sixth supplemental order modifying Decisions Nos. 4744 and 9779, providing for overhead crossing sign or signs visible from both directions to traffic in lieu of automatic flagman at crossing No. 25, Williams Street, partly in city of San Jose and partly in county of Santa Clara, and denying petition for modification of protection heretofore ordered for crossing of 24th Street, same city and county	April 23, 1928
19666	14606	The Atchison, Topeka and Santa Fe Railway Company	Authorized to construct tracks in vicinity of First Street viaduct with certain impaired clearances not conforming with Commission's General Order No. 26-C	April 24, 1928
19673	14557	Key System Transit Company, Central Pacific Railway Company and Southern Pacific Company	Approving agreement apportioning cost of maintenance of crossing at intersection of 23d Avenue and Glascock Street in Oakland, Alameda County, and the crossing at the intersection of Park Street and Blanding Avenue in Alameda	April 25, 1928
19674	14558	Key System Transit Company and Southern Pacific Company	Approving agreement apportioning cost of maintenance of crossings at the intersection of Park Avenue and Halleck Street in Emeryville, Alameda County, near the intersection of Ward Street and Shattuck Avenue in Berkeley, and in the vicinity of the Pullman Shops in Richmond, Contra Costa County	April 25, 1928
19677	12645	Southern Pacific Company	Order revoking prior order and dismissing application to construct spur track at grade across O'Neil Avenue and county road in the vicinity of Belmont Station, San Mateo County	April 25, 1928
19680	12675	Southern Pacific Company	Order revoking prior order and dismissing application to construct spur track at grade across portion of Seventh Street, and across King, Townsend, Gilbert, Butte Place, Lucerne and Harriet Streets in the city and county of San Francisco	April 26, 1928
19682	13514	California Water Service Company	Supplemental order authorizing execution of mortgage guaranteeing payment of bonds heretofore authorized by the Commission	April 27, 1928

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19683	14420	Southern Pacific Company and Sacramento Northern Railway	Approving agreement relating to ownership, maintenance and use of certain trackage in city of Sacramento	April 27, 1928
19689	13819 13878	George W. Wilkins and Guy S. Alexander Geo. W. Wilkins and L. B. Larson	First supplemental order authorizing George W. Wilkins to sell his one-half interest in an auto stage line known as the "Bishop-Mono Lake Stage Line," to Guy S. Alexander, and the latter and L. B. Larson, a co-partnership, are authorized to acquire said line, and to operate an on-call service to Whitmore Tubs, Rymer's Camp on Convict Lake, Los Angeles High Sierra Playground, Tamarack Lodge and Crystal Crag, such rights convering seasonal operation from June to October, inclusive, of each year	April 27, 1928
19690	11018	Board of Supervisors of San Joaquin County	Modifying Decision No. 15779, authorizing construction of county road connecting West Lane and Cherokee Lane, over tracks of Southern Pacific Company at grade at a point 510 feet north of location heretofore authorized in the vicinity of Castle, and granting an extension of time of six months in which to construct said crossing	May 2, 1928
19696	12880	Visalia Electric Railroad Company	Granting authority to discontinue maintenance of its portion of joint agency at station of Strathmore, Tulare County, and to maintain same as non-agency station	May 2, 1928
19701	11906	Feather River Power Company	First supplemental order authorizing use of remaining proceeds of $36.40 received from sale of stock authorized in Decision No. 15672	May 2, 1928
19703	12525	Pacific Electric Railway Company	Order revoking prior order and dismissing application to construct spur track at grade across and upon San Vicente Boulevard in the city of Los Angeles (Decision No 16260)	May 2, 1928
19706	14385	County of Los Angeles	First supplemental order granting permission to operate over a portion of its tracks with impaired clearances during construction of overhead crossing of Eastern Avenue in Los Angeles County, conditional upon suitable safety measures being installed to protect same	May 2, 1928
19709	14620	Daisy Noel (Lomita Park Water Works)	Granting authority to transfer water system to Pacific Water Company for sum of $15,000 cash	May 3, 1928
19710	C2270	The Inter-City Improvement Association et al. vs. A. B. Chapman Estate	Granting petition of Lloyd A. Murphey for rehearing of complaint involving rates charged by defendant company in vicinity of Pasadena, Los Angeles County	May 3, 1928
19712	12544	Southern Pacific Company	Order partially revoking prior order (Decision No. 16209) and partially dismissing application—grade crossings in city of Sacramento	May 4, 1928
19715	14650	San Francisco, Napa and Calistoga Railway	Granting permission to place in effect on five days notice to public a revised train schedule to conform with trips of Monticello Steamship Company, eliminating two trains daily between Vallejo and Napa	May 7, 1928
19718	14554	Pacific Electric Railway Company	Authorizing abandonment and removal of freight platform at Coyote Station, in Los Angeles County	May 8, 1928
19722	13697	Southern Pacific Company	Second supplemental order amending Decision No. 18320, to provide for the manual control of wig-wags between the hours of 7.00 a. m. and 7.00 p. m. daily instead of between the hours of 6.00 a. m. and 7.00 p. m.	May 8, 1928
19724	14146	Corcoran Telephone Exchange	Supplemental order making effective June 1, 1928, rates authorized in Decision No. 19618	May 8, 1928
19725	12527	Pacific Electric Railway Company	Order revoking prior order and dismissing application to construct spur track at grade across and upon Exposition Boulevard and Hope Street in city of Los Angeles	May 8, 1928

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726	13956	Southern Pacific Company	Order revoking prior order and dismissing application to construct spur track in, along and across Hendy Avenue in city of Sunnyvale, Santa Clara County	May 8, 1928
732	13148	Minarets and Western Railway Company	First supplemental order modifying Decision No. 17423 in order to substitute the words "Madera County" wherever "Fresno County" is used	May 9, 1928
19734	1621	City of Manhattan Beach	Second supplemental opinion and order revoking Decision No. 2510 insofar as it refers to the construction of Second Street and Longfellow Avenue beneath the track, Oak Avenue and Marine Avenue above the track and the temporary grade crossing at Pacific Avenue across the track of The Atchison, Topeka and Santa Fe Railway Company, and granting permission to the city to construct Pacific Avenue and El Camino Real at grade across the track of said railroad company	May 9, 1928
19736	12698	Southern Pacific Company	Granting authority to discontinue agent at station of Malaga in Fresno County	May 9, 1928
19745	8770	H. Campodonico Draying Company	Supplemental order revoking certificate to operate auto freight service between San Francisco and Irvington via San Leandro (Decision No. 12045)	May 9, 1928
19746	14595	Southern Pacific Company	Authorizing abandonment of passenger shelter shed at non-agency station of Almond in Orange County	May 9, 1928
19747	14616	Southern Pacific Company	First supplemental order amending Decision No. 19688—grade crossing in city of Vacaville	May 9, 1928
19750	14599	American Railway Express Company	Authorized to abandon agency station known as Devore, located on line of The Atchison, Topeka and Santa Fe Railway Company in San Bernardino County	May 11, 1928
19755	14587	The Atchison, Topeka and Santa Fe Railway Company	Authorized to abandon agency station at Ibis on Arizona division in San Bernardino County	May 11, 1928
19760	11167	Pat Silvestri and Nick Buinda	Supplemental order revoking and annulling certificate to operate auto truck service between Colma and San Francisco, Oakland, Hayward and San Leandro (Decision No. 15254)	May 11, 1928
19765	8584	S. Noda	Supplemental order revoking and annulling certificate to operate auto truck service between Livingston and Oakland and San Francisco (Decision No. 12218)	May 15, 1928
19769	14501	Gardena Valley Water Company	First supplemental order authorizing execution of mortgage to secure bonds heretofore authorized	May 16, 1928
19770	13572	Haines Canyon Water Company	Order denying petition for rehearing of application to increase rates	May 17, 1928
19771	C2367	Arizona Edison Company vs. The Southern Sierras Power Company	Order denying complainant's petition for rehearing	May 17, 1928
19778	8010	A. E. Thym	Supplemental order revoking certificate to operate auto passenger and package service between Mokelumne Hill and West Point	May 18, 1928
19780	14454	Rio Vista Lighterage Company, Inc.	First supplemental order granting authority to execute two chattel mortgages in lieu of one chattel mortgage authorized April 2, 1928, for the purpose of securing promissory note for $25,000	May 18, 1928
19786	14669	Joseph Perumean and Company	Supplemental order amending Decision No. 19761, to correct error	May 21, 1928
19791	C2449	Union Paving Company vs. Sunset Railway Company, Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company	Order dismissing complainant's petition for rehearing	May 22, 1928
19794	C2522	American Potash and Chemical Corporation vs. Trona Railway Company	Directing defendant to refund to complainant all charges collected in excess of 9 cents per 100 pounds on numerous shipments of sulphuric acid from Searles to Trona during period from February 8, 1927, to March 8, 1928, inclusive	May 22, 1928
19798	11481	Southern Pacific Company	Second supplemental order amending Decision No. 15238 to permit switching over crossing at Fifth and Brannan Streets, San Francisco, between hours of 12.00 noon and 1.00 p. m. daily	May 23, 1928
19799	13844	G. Lawrence Ritchie and W. W. Wood	Supplemental order granting permission to discontinue transportation of passengers between San Diego and Warner's Hot Springs and intermediate points	May 23, 1928

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19801	C2456	California Hawaiian Milling Company vs. Southern Pacific Company	Denying petition of defendant for rehearing	May 23, 1928
19805	14069	Interstate Telegraph Company	Supplemental order authorizing rates on toll lines from June Lake to Mono Lake Inn, Mono County, which extension has just been completed (Decision No. 19108)	May 23, 1928
19809	13914	Los Angeles County Water Works and Gardena Valley Water Company	First supplemental order approving stipulation that they, their successors or assigns, will never claim franchise value in excess of amount paid therefor ($100.00)	May 25, 1928
19814	14666	East Bay Water Company	Granting authority to sell several parcels of non-operative lands in Contra Costa County	May 26, 1928
19819	14686	Vallejo Electric Light and Power Company	Authorized to place in effect reduced rates in territory served, resulting in saving to consumers of approximately $25,000 a year	May 28, 1928
19821	14668	Southern Pacific Company	Granting permission to close agency at station of Farmersville, Tulare County and to maintain same as non-agency station	May 28, 1928
19828	C2535	Union Oil Company of California vs. Southern Pacific Company and Northwestern Pacific Railroad Company	Directing defendants to refund to complainant all charges collected in excess of 7 cents per 100 pounds on carload shipments of petroleum road oil and asphalt from Oleum to Petaluma during period from February 15, 1927, to January 21, 1928	May 29, 1928
19829	14700	Southern Pacific Company	Authorized to abandon non-agency station of Anderson Brick Yard in Shasta County	May 29, 1928
19831	12412	H. O. Varrier	Supplemental order revoking and annulling certificate to operate auto freight service between Sacramento and Yuba City, and between Marysville and all intermediate points and between Marysville and Sacramento, which was subsequently transferred to P. W. and H. E. Holmes (Decision No. 19759)	May 29, 1928
19832	12626	Los Angeles Railway Corporation	Supplemental order granting permission to change terminal of Manchester Avenue motor coach line from Cedar Street to Ivy Street (Decision No. 16988)	May 29, 1928
19835	13480	City of Huntington Beach	Order revoking prior order and dismissing application to construct grade crossing over tracks of Southern Pacific Company and Pacific Electric Railway Company on Hartford Street between Alabama Avenue and Lake Avenue (Decision No. 18356)	May 29, 1928
19838	C2498	P. B. Engh vs. The Atchison, Topeka and Santa Fe Railway Company, Sacramento Northern Railway and Central California Traction Company	Ordering defendants to refund to complainant $783.95 on account of unreasonable freight charges collected on two carloads of structural steel moved June 16, 1923, from Blythe to Tarke	May 29, 1928
19842	14222	San Diego and Arizona Railway Company	First supplemental order modifying Decision No. 19379, providing service on Lakeside Branch line only on Tuesday, Thursday and Saturday of each week	May 29, 1928
19843	14691	Pacific Electric Railway Company	Authorized to abandon service and remove tracks on its Magnolia Avenue line in city of Long Beach	May 29, 1928
19845	C2253	The Western Pacific Railroad Company vs. Northwestern Pacific Railroad Company	Order denying petitions of defendant and by intervenor, Southern Pacific Company, for rehearing of complaint relative to rates on lumber	May 29, 1928
19847	14353 14487 C2513	Mrs. F. C. Williams A. C. Coolbaugh A. C. Coolbaugh, Investigation into service, etc. of	Supplemental order correcting error in Decision No. 19796	June 1, 1928

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19848	14620	Daisy Noel (Lomita Park Water Works) and Pacific Water Company	First supplemental order amending Decision No. 19709—transfer of water system by former to latter	June 1, 1928
19849	C2374	Albers Bros. Milling Company vs. Southern Pacific Company	Order denying petition for reconsideration of record as made, filed on March 29, 1928, by complainant	June 1, 1928
19855	10261	Emory E. Gilman	Supplemental order revoking and annulling certificate to operate auto buses between Kentfield and San Anselmo, and between Manor and San Anselmo (Decision No. 13883)	June 1, 1928
19856	13856	Southern Pacific Company	Order revoking prior order and dismissing application (Decision No. 18604)—grade crossing at Herman Street and Atlantic Avenue, city of San Bruno, San Mateo County	June 1, 1928
19858	C2531	Pomona Tile Manufacturing Company vs. Southern Pacific Company	Ordering defendant to refund to complainant all charges collected in the amount of the difference between the freight charges paid and those that would have accrued at 28½ cents per 100 pounds on shipments of crude clay moved from Lincoln and Ione to Pomona during the period from February 16, 1926, to September 22, 1927	June 5, 1928
19859	14732	Monterey County Water Works	Granting authority to sell certain non-operative property in Carmel, Monterey County, to Amos W., and Fannie Goldsmith Engle	June 6, 1928
19861	14735	O. P. Mills and Della F. Mills (Willow Glen Water Works)	Authorized to transfer water system in Willows District, near city of San Jose, to San Jose Water Works for sum not to exceed $25,000	June 7, 1928
19862	14056	Southern Pacific Company	Order revoking prior order and dismissing application (Decision No. 18851)—grade crossing at Pajaro Street, city of Salinas	June 7, 1928
19864	14132	City of Marysville	Order amending plans for construction of pedestrian subway at B street under tracks of Southern Pacific Company (Decision No. 19113)	June 8, 1928
19873	14604	Sunset Railway Company	Granting authority to abandon 32 non-agency stations in Kern County	June 11, 1928
19875	14714	The Atchison, Topeka and Santa Fe Railway Company	Granting permission to discontinue and abandon spur track known as Knoblock spur in Madera County, and to eliminate station of Knoblock	June 11, 1928
19876	11813	D. M. Haskin	Supplemental order revoking and annulling certificate to operate auto passenger, express and baggage service between Big Pine and point on California-Nevada state line near Oasis (Decision No. 15549)	June 11, 1928
19877	13648	Carl W. Lewis	Supplemental order authorizing transfer of auto passenger and freight line by Lewis to A. J. and B. C. Tucker, co-partners (Decision No. 18344)	June 11, 1928
19878	12669	County of Merced	Order making permanent a temporary crossing over track of The Atchison, Topeka and Santa Fe Railway Company in vicinity of Ballico (Decision No. 17783)	June 12, 1928
19879	14740	Sunset Railway Company	Granting permission to abandon non-agency station of Artwell, Kern County	June 12, 1928
19880	14742	Southern Pacific Company	Granting permission to abandon non-agency station of Etter, Shasta County	June 12, 1928
19883	13543	California Transit Company	Second supplemental order authorizing issue of note or notes for $127,000 to renew note or notes for like amount (Decision No. 18080)	June 12, 1928
19884	13372	The Western Union Telegraph Company	Order denying petition for rehearing filed by Grove J. Fink and others, protestants, relative to increased rates for transmission of intrastate press dispatches	June 12, 1928
19885	14743	Southern California Edison Company	Approving agreement with Atkins Realty Company for the extension of Edison Company's electric lines to the realty company properties in San Bernardino County	June 13, 1928
19886	14792	Northwestern Pacific Railroad Company	Granting permission to curtail passenger service between Eureka, Arcata, and Normal Junction in Humboldt County, to one mixed train daily, and one passenger train on Saturdays and Sundays	June 13, 1928
19889	14389	Pacific Electric Railway Company	Granting permission to discontinue operation of its Venice-Compton motor coach line (Decision No. 18186)	June 13, 1928

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19891	C2542	Hollywood Granite Company, Inc., vs. Pacific Electric Railway Company	Order authorizing defendant to waive undercollection from complainant in sum of $45.00 on account of the unreasonable charges lawfully applicable on the shipment of calcium chloride moved from Home Junction to Bergamot during July, 1926	June 13, 1928
19898	C2531	Pomona Tile Manufacturing Company vs. Southern Pacific Company	First supplemental order amending Decision No. 19858, to substitute the word "discriminatory" for the word "unreasonable" in next to last paragraph of opinion on page 2	June 14, 1928
19899	C2535	Union Oil Company of California vs. Southern Pacific Company and Northwestern Pacific Railroad Company	First supplemental order amending Decision No. 19828	June 14, 1928
19900	5928	Western Motor Transport Company	Order denying petitions for rehearing filed by County of Contra Costa, San Francisco-Sacramento Railroad Company and Contra Costa Transit Company, County of San Joaquin, and Western Motor Transport Company, of the proceeding involving operative rights for auto stage service between Oakland and Martinez, Martinez and Stockton, and other points in Contra Costa and San Joaquin Counties (Decision No. 19691)	June 15, 1928
	6114	Star Auto Stage Association		
	6115	James Vassallo and George W. Hicks		
	10913	Yosemite Transit (R. R. Young)		
	10958	Contra Costa Transit Company and Martinez Bay Point Stage Company		
	10986	Colberg and Colberg (Central Transit Company)		
	11005	California Transit Company		
19904	14678	Southern Pacific Company	Granting permission to abandon non-agency station of Gorge, Placer County	June 20, 1928
19906	14741	Southern Pacific Company	Granting permission to abandon agency at station of Hercules in Contra Costa County, and continue same as non-agency station	June 20, 1928
19907	13871	South Coast Gas Company	Third supplemental order modifying Decision No. 18594 to permit use of $5,315.00 of proceeds received through the issue and sale of stock heretofore authorized	June 21, 1928

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See Service III.

ACCOUNTING

1. While applicant's balance sheet showed the discount on its bonds and stock, it did not include under such discount expenses incurred in connection with a bond issue. "If such expenses are included in the amount paid to the contractor they should, when the cost of the plant is distributed to the fixed capital accounts, be transferred to debt discount and expense in accordance with the uniform system of accounts for electrical corporations." *Feather River Power Co.*, 31 C. R. C. 100, 101.

2. Upon the transfer of property for an amount less than the cost thereof, it is better accounting practice if such difference as may exist between the historical cost of the properties and the purchase price be credited to a subaccount under reserve for accrued depreciation, rather than to surplus account. *Willits Water Co.*, 31 C. R. C. 442, 444.

3. Purchase price in excess of the cost of physical properties, organization expense and current assets of a vendee utility should be charged to miscellaneous debits to profit and loss. *So. Cal. Ed. Co.*, 31 C. R. C. 615, 618.

AMORTIZATION

See Return.

APPORTIONMENT

1. The cost of maintaining an office in another city as a convenience to a utility's mining interests, and not necessary to public utility operations, is not properly chargeable against local water operations. *Hobart Estate Co.*, 31 C. R. C. 673, 680.

AUTOMOTIVE TRANSPORTATION

I. Jurisdiction, Powers and Duties of Commission.
   1. Over private road.
II. Certificates of Public Convenience and Necessity.
III. What Constitutes Operation as Common Carrier.
   1. Contract carriers.
   2. Radial service.
IV. Transfer of Operative Rights.
V. Expansion or Extension of Operative Rights.
VI. Lease of Operative Rights.
VII. Lease of Equipment.
VIII. Through Service.
IX. Revocation of Operative Rights.
X. Service.
XI. Unlawful Operation.

Rates, *see* Rates IV.

I. JURISDICTION, POWERS AND DUTIES OF COMMISSION

1. Over private road

1. Automotive operations over a private road are not subject to the jurisdiction of the Commission (*Bolton* vs. *Olson*, 23 C. R. C. 968). *E. L. McConnel*, 31 C. R. C. 628, 635.

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II. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

1. Authorization was granted to an interurban railway to operate a coordinated bus service to the grounds of a National Orange Show during the periods when such show is open, without additional fare, in preference to a protestant stage line not coordinated with other services, and proposing to charge an additional fare. *P. E. Ry. Co.*, 31 C. R. C. 174, 178.

2. An automotive carrier authorized to operate between two cities, provided that no through service be rendered, may not, by moving a station to a point just outside the city limits of one city, and there accepting shipments destined to the other city, enlarge his operative rights without authorization. *H. O. Varrier*, 31 C. R. C. 754, 756.

III. WHAT CONSTITUTES OPERATION AS COMMON CARRIER

1. Contract carriers

1. A parcel delivery company incorporated to carry on the business of a private carrier, for and under contract with parties voluntarily selected, which has reserved and exercised the right of selection in respect to shippers served, and which does not hold itself out to serve the public generally, in the absence of evidence that contracts were made, or attempted to be made to an unlimited number or that its operations were not carried on in good faith, is a private carrier over which the Commission has no jurisdiction. (*Frost* vs. *Railroad Commission*, 271 U. S. 583; common carrier defined, see *Associated Pipe Line Co.* vs. *Railroad Commission*, 176 Cal. 518). *Coronado Transfer* vs. *United Parcel Service*, 31 C. R. C. 208, 210.

2. An individual operating motor trucks under alleged verbal contracts made for no specific period of time or for any specific volume or amount of tonnage, carrying no obligation on the part of the shipper to patronize the service, was held to be operating trucks as a common carrier. *Bakersfield etc. Co.* vs. *Willhour*, 31 C. R. C. 367, 372.

3. An individual transporting by truck films, lobby displays, etc., from film exchanges to theaters, under verbal contracts, with rates based on personal ancillary services as well as on the weight of package and distance to be transported, the transportation being incidental to the personal service, such as selection of films, etc., is operating as a private carrier. (*Film Transport Co.* vs. *Michigan Public Utilities Commission*, 17 Fed. (2d), 857.) *Hare* vs. *Gilboy*, 31 C. R. C. 566, 568.

4. It would be an evasion of the clear intent and purpose of the Auto Stage and Truck Transportation Act to permit a carrier, by the simple device of entering into a number of verbal agreements, terming them "contracts," to secure all of the advantages of a public motor carrier without assuming the attendant obligations and duties. By merely pretending to investigate each inquiry and discriminate in the selection of customers, a carrier otherwise public, does not change his status that he may be regarded as a private carrier (*Sanger* vs. *Lukens*, 24 Fed. (2d), 226; *Smitherman* vs. *Mansfield Lumber Co.*, 6 Fed. (2d), 29; *Restivo* vs. *West*, 129 Atl. 884, etc.). *Thornewill* vs. *Gregory*, 31 C. R. C. 843, 844.

2. Radial service

1. Radial automotive service is not within the jurisdiction of the Commission (*Ben Moore*, 27 C. R. C. 388). *E. L. McConnel*, 31 C. R. C. 628, 633.

IV. TRANSFER OF OPERATIVE RIGHTS

1. When no operation was ever commenced after authorization from the Commission, there is nothing upon which to base an authorization for transfer. Such operative rights as may have been conferred not having been exercised do not exist. *Western Motor Transport Co.*, 31 C. R. C. 690, 707.

V. EXPANSION OR EXTENSION OF OPERATIVE RIGHTS

1. Operative rights can not be enlarged by tariff filing, a formal proceeding being necessary. *G. Mattly*, Dec. 19988, App. 14835 (not printed).

2. The consolidation of "on demand" service with scheduled operations will not be permitted until applicant is prepared to establish such service upon a regular

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basis, in which event further authority should be sought from the Commission (*R. M. Tolston*, 26 C. R. C. 68). *E. L. McConnel*, 31 C. R. C. 628, 646.

VI. LEASE OF OPERATIVE RIGHTS

1. An automotive transportation company will not be authorized to lease that part of its operative right requiring it to transport property other than express carried on its passenger stages. If it desires to divest itself of the obligation to carry freight, application should be made to abandon such service. *Pickwick Stages System*, 31 C. R. C. 260, 261.

2. The principle, in matters involving sales, that an operative right is indivisible should apply with equal force in cases where a lease of a portion of a larger operative right is sought. (*Joseph Held*, 20 C. R. C. 330; *W. Kielhofer*, 23 C. R. C. 114; *Pickwick Stages System*, 31 C. R. C. 260.) *Pickwick Stages System*, 31 C. R. C. 410, 412.

3. Ordinarily, public interest will not be served by permitting a lease of an operative right when the owner obviously desires to divest himself of the burden thereof, yet seeks to preserve his certificate because of possible future value. If public need requires the continuation of service which another is ready to render his interest should not be limited to that of a mere lessee. *Pickwick Stages System*, 31 C. R. C. 410, 413.

VII. LEASE OF EQUIPMENT

See, also, General Orders.

1. General Order No. 67, in respect to leasing of equipment, makes no distinction between vehicles operating under their own motive power and others (trailers), and clearly requires the filing of a lease when any vehicle used for transporting freight is operated by a carrier other than the owner. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 238.

VIII. THROUGH SERVICE

1. The concurrent filing of proportional rates, together with other evidences of close relationship between the two automotive truck carriers, was held to support the allegation that such rates were published for the exclusive purpose of establishing a through service. The Commission does not mean to hold that the filing of proportional rates by a single carrier in a proper case shall, of itself, constitute an expansion of operative rights and that it is required to obtain a certificate, but each case must be decided upon its merits. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 238.

IX. REVOCATION OF OPERATIVE RIGHTS

1. Abandonment of service or discontinuance of operation without the obtaining of authorization justify the revocation of operative rights. *Pasadena-Ocean Park Stage Line*, 31 C. R. C. 142, 144.

2. While there was a slight disruption of service as a result of a bankruptcy proceeding involving the estate of the holder of an operative right, but there was no real abandonment of service, such right was not revoked. *Pasadena-Ocean Park Stage Line*, 31 C. R. C. 142, 145.

X. SERVICE

See, also, Service.

1. Authorization to abandon branch line stage service was authorized where conducted at a loss without prospect of future growth, continued operation would be a burden upon other lines, and ample rail transportation service was available. *Pickwick Stages System*, 31 C. R. C. 356, 358.

XI. UNLAWFUL OPERATION

1. A complaint alleging unlawful operation in the carrying of unauthorized commodities was dismissed where the evidence showed that employees of the certificate holder agreed among themselves to transport the merchandise, they and not the certificate holder profiting by such operation. *B. & L. A. Fast Freight Co.* vs. *Gombos*, 31 C. R. C. 55, 58.

2. Practice of selling membership tickets in auto travel clubs constitutes a violation of section 79 of the Public Utilities Act in that aid and assistance are thereby rendered to individuals unlawfully operating automobile stages as common carriers of passengers between fixed termini or over regular routes, for compensation, over the public highways in violation of section 50¼ of the Public Utilities Act. *Calif. Transit Co.* vs. *Auto Tours Continental Club*, 31 C. R. C. 158, 163.

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3. Individuals operating auto travel clubs were ordered to cease and desist from aiding or abetting in the violation of the provisions of section 50¼ of the Public Utilities Act by the sale of membership certificates in such clubs, or in any other manner in violation of the act. *Calif. Transit Co.* vs. *Auto Tours Continental Club*, 31 C. R. C. 158, 166.

4. In ordering the cessation of common carrier truck operation without the necessary certificate, copies of said order were forwarded to the district attorneys of the counties in which such operation was conducted. *Bakersfield etc. Co.* vs. *Willhour*, 31 C. R. C. 367, 372.

5. Where the holder of an operative right abandoned operations and another transportation company conducted test operations over such route for several months before entering into a contract of sale and before an application to transfer the certificate was filed, such application was denied and both parties ordered to cease operations. *Mrs. F. C. Williams*, 31 C. R. C. 790, 792.

CAPITALIZATION

See Security Issues.

CARRIERS

What constitutes common carrier operation, *see* Automotive Transportation III.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

I. Preference Among Applicants.

II. Grounds for Granting or Refusing.

1. In general.
2. Possession of franchise.
3. Prior illegal operation.
4. Possibility of success.
5. Field adequately served.

See, also, Monopoly and Competition.

I. PREFERENCE AMONG APPLICANTS

1. As between two applicants, a certificate was granted to the applicant shown by the record to have operated a satisfactory freight truck service for nearly ten years and whose present application to extend operations antedated the proposed service of the other applicant by several months. *L. R. Kagarise*, Decision 19410, Application 13087.

2. A certificate to operate automotive truck service was granted to a railway rather than to a "partnership" when the former, realizing the inadequacy of present rail service, voluntarily and in good faith offered to supplement such service by motor truck, was not forced into making the application because of the filing of a prior application by a threatened competitor, and where, in experience, ability and financial responsibility there was no material difference between the applicants. *Sierra Ry. Co.*, 31 C. R. C. 126, 130.

3. Public convenience and necessity having been affirmatively established by the record, the Commission will consider the testimony and exhibits relative to their showing as to the applicant best qualified to render the proposed stage service. *United Stages*, 31 C. R. C. 286, 291.

4. A motor transportation company was held to be the applicant best qualified to undertake the proposed service, in that it afforded a rate schedule averaging less than the proposal of applicant electric railway, was well qualified financially,

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was operating present authorized lines satisfactorily and without deficit, and in addition, was the prior applicant. (26 C. R. C. 892.) *United Stages*, 31 C. R. C. 286, 295.

5. An existing gas utility, being an established institution of undoubted financial responsibility, was granted authorization to operate in certain territory, rather than a new company proposing to charge higher rates, and where doubt existed whether the latter was financially prepared to assume responsibilities involved by the granting of a certificate, although the existing utility made its offer of service only to forestall competition. *P. G. & E. Co.*, 31 C. R. C. 298, 300.

II. GROUNDS FOR GRANTING OR REFUSING

1. In general

1. Regardless of any stipulation as to what one or the other automotive carrier might carry, it is incumbent upon the Commission to determine generally what the public need requires, and to give due consideration to the rights of the existing carrier. *D. S. Mitchell*, Decision 19738, Application 14486.

2. A certificate to operate a water system will not be granted where mains are too small, and elevation and capacity of a storage tank are both inadequate to give proper service at reasonable pressure. *Colony W. Co.*, 31 C. R. C. 280, 281.

3. An application to operate automotive service will be denied where the highways over which operations are proposed have not been completed and accepted by the proper public authorities. *E. L. McConnel*, 31 C. R. C. 628, 647.

4. A certificate to operate motor bus service was denied becaue of inefficient equipment, lack of ability to provide better equipment and improper braking and servicing of vehicles, although some small need for transportation service was shown. *F. Meatteauer*, 31 C. R. C. 871, 873.

2. Possession of franchise

1. When streets or roads in which pipe lines are installed have not yet been dedicated to public use, no franchise or other permit from the county authorities is necessary for the purpose of an application for a certificate to operate a water system. *Re McGeoghegan*, 31 C. R. C. 135, 136.

2. A franchise or permit from county authorities is not necessary for the purpose of certification where streets and roads within the area to be erved by a water system have not been dedicated to public use. *Benbow Power Co.*, 31 C. R. C. 849, 850.

3. Prior illegal operation

1. Subsequent to the transfer of operative rights a purchasing carrier was granted a certificate to perform an express and baggage service carried on for years under the mistaken impression that proper legal authority for such service had been established. *S. P. Motor Transport Co.*, 31 C. R. C. 83, 84.

2. The Commission will not grant a certificate to an applicant who has wilfully operated as a common carrier for compensation without first having obtained a certificate. *J. W. Ritzman*, 31 C. R. C. 772, 774.

4. Possibility of success

1. Authorization granted to establish an automotive passenger service not expected to be profitable where applicant proposed to assume all losses in operation and did not expect a compensatory adjustment of rates, but desired to establish service to a particular hotel. *Flintridge Motor Co.*, 31 C. R. C. 92, 93.

5. Field adequately served

See, also, Monopoly and Competition.

1. Certificates to operate auto service in territory served by an existing auto carrier, sought by applicants largely because of threatened discontinuance of service, on account of bankruptcy proceedings, will be denied upon authorizing the transfer of the existing operative right to a responsible carrier. *Pasadena-Ocean Park Stage Line*, 31 C. R. C. 142, 146.

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COMMISSION

See, also, Automotive Transportation.

1. *Per* Carr, *concurring.* The Commission is not vested with jurisdiction to enter declaratory judgments adjudicating its prior actions to have been invalid. *Arizona Edison Co.* vs. *So. Sierras P. Co.*, 31 C. R. C. 609, 613.

COMPARISON

Of rates to determine reasonableness, *see* Rates III, 2.

CONSOLIDATION, MERGER AND SALE

I. In General.

II. Jurisdiction Powers and Duties of Commission.

1. Contracts.

2. Transfer to Governmental agency.

III. Grounds for Denying.

IV. Conditions Upon Which Authorization Granted.

Capitalization of excessive cost, *see* Security Issues VII.

I. IN GENERAL

1. Although all properties to be purchased were located within the State of Oregon, applicant having elected to file application with the California Commission for approval of the transaction, authorization was granted. *The Calif.-Oregon Power Co.*, Decision 19473, Application 14418.

2. Whatever interests an automotive operator may have in a pending application to extend service are of a contingent nature and not assignable, and in a proceeding to transfer existing operative rights, authorization will not be granted to transfer additional franchises or extensions that may be granted to the operator. *Valley & Coast Transit Co.*, 31 C. R. C. 73, 75.

3. Where one utility, in purchasing the properties of another, pays more than the actual or estimated historical cost, the difference between such historical cost and the purchase price should be charged to surplus and not to capital accounts. *G. W. P. Co.*, 31 C. R. C. 718, 719.

II. JURISDICTION POWERS AND DUTIES OF COMMISSION

1. Contracts

1. In an application to transfer a water system to an irrigation district and to abrogate certain contracts of consumers, where the contract holders have agreed to relinquish their rights in order to expedite the transfer, with the exception of one, and steps are being taken for the making of a new contract between that consumer and the district, it is unnecessary to determine whether the contracts should be abrogated. *Stockton & M. Canal Co.*, 31 C. R. C. 62, 65.

2. The interpretation of the rights of holders of so-called water right contracts with a public utility is not a matter germane to a proceeding seeking authorization to transfer the utility property to a water storage district, but involves a question of policy on the part of the directors of a district relating solely to its future operations and entirely beyond the jurisdiction of the Commission. *Madera C. & I. Co.*, 31 C. R. C. 192, 194.

2. Transfer to governmental agency

1. Under the provisions of the "Water Storage District Act" the duty is imposed upon the proper officials of the district to determine what properties are necessary for the storage district, the amount to be paid therefor, and the manner in which the district shall be operated. The district having made this determination, it but remains for the Commission to determine whether or not the utility should be permitted to sell

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its properties and discontinue service. *San Joaquin & K. R. C. & I. Co.*, 31 C. R. C. 198, 201.

2. As to requests of a water storage district that the Commission make certain determinations concerning the future operations of the irrigation project in a proceeding authorizing the transfer of utility properties to the district, these are matters of policy to be determined by the properly elected and qualified officers of the district and entirely beyond the jurisdiction of the Commission. *San Joaquin & K. R. C. & I. Co.*, 31 C. R. C. 198, 204.

3. In authorizing the transfer of public utility property to a water storage district, the Commission does not thereby endorse, approve or find upon the reasonableness of the value claimed or of the price agreed to be paid. As to whether or not the project is feasible is a matter under the "Water Storage District Act," delegated to the board of directors of the district and to other public bodies, and finally to the landowners within the district. *San Joaquin & K. R. C. & I. Co.*, 31 C. R. C. 198, 205.

4. Authorization to transfer utility properties to a water storage district should not be considered as an approval of any proposed contract by the district with other bodies defining water rights and conflicting claims thereto, but solely as an authorization to the public utility company to dispose of its properties. *San Joaquin & K. R. C. & I. Co.*, 31 C. R. C. 198, 206.

III. GROUNDS FOR DENYING

1. Although no protestant objected to a proposed transfer of a one-half interest in an automotive stage line, certain inequalities appearing in the proposed agreement, formal approval was withheld pending the filing of a revised agreement. *Pickwick Stages System*, 31 C. R. C. 481, 497.

IV. CONDITIONS UPON WHICH AUTHORIZATION GRANTED

1. The transfer of an irrigation system was authorized on the condition that the purchasing irrigation district file a resolution agreeing to admit within the district boundaries all consumers or landowners who at any time in the past had used water from the system, and who were at the time of transfer excluded from the district boundaries, provided that proper application be made within a specified time. *Stockton & M. Canal Co.*, 31 C. R. C. 62, 64.

2. In authorizing the transfer of utility properties, the vendee utility was required to file with the Commission a certified copy of the deed or other instrument of conveyance, together with a copy of each and every bookkeeping entry entered on its books to record the transaction. *Tuolumne Co. E. P. & L. Co.*, 31 C. R. C. 189, 192.

3. The policy of the Commision has been, in applications to transfer public utility properties to governmental agencies, to see either that all consumers which have theretofore been served by the utility are either included within the boundaries of the governmental agency or district, or if not so included, that thereafter service be compelled by the district and protected to the consumer whose lands are excluded from the boundaries of the district. (*Southern Calif. Mountain Water Co.*, 1 C. R. C. 520.) *San Joaquin & K. R. C. & I. Co.*, 31 C. R. C. 198, 201.

CONTRACTS

Contract carriers, *see* Automotive Transportation III.

Rate contracts, *see* Rates.

1. Arrangements entered into by and between purchasers of property and a real estate company, placing restrictions or conditions on right to receive public utility water service from a closely allied utility, other than requirements as provided in the utility's rules and regulations, are in no manner binding upon the utility, nor do they preclude any of its patrons from receiving service under its effective rules. *Fontana Domestic W. Co.*, 31 C. R. C. 117, 121.

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CROSSINGS

I. In General.
II. Private Crossings.
III. Grade Crossings
IV. Division of Costs.

Standard types of crossing protection, *see* General Orders.

I. IN GENERAL

1. Supplement No. 2 to General Order 75 (canceling Supplement No. 1) adopted, relative to the identification of public crossings and crossing signs. *Re Crossings*, 31 C. R. C. 214.

2. Although there is a possibility of a superior court action, a railroad having been constructed without a franchise from a county under the general authority granted in the Civil Code, the question whether or not a railroad should be operated in the vicinity is not within the scope of a proceeding before the Commission concerning only crossings with public thoroughfares, and determination of such an application will not be withheld until the outcome of such possible suit. *S. P. Co.*, 31 C. R. C. 423, 424.

3. While it is customary before acting upon applications to construct tracks across city streets or roads, to require a franchise from the political subdivision having jurisdiction, this requirement being merely as evidence of consent of the local governing body to the proposed construction, evidence of such consent having been introduced otherwise, for the purposes of the Commisison, a franchise from the city is not necessary. *S. P. Co.*, 31 C. R. C. 423, 425.

II. PRIVATE CROSSINGS

1. In general the Commission is of the opinion that where private owners subdivide land holdings which require additional private crossings under section 485*a* of the Civil Code, an attempt should be made to consolidate the use of such crossings between two owners where reasonably possible. *A. S. Condos*, 31 C. R. C. 226, 228.

III. GRADE CROSSINGS

1. Authorization to construct a temporary crossing at grade was granted upon the express condition that a further joint application for a separation of grades be filed by the interested parties within a specified time, such authorization to become void and the temporary track to be removed upon failure to file such application. *S. P. Co.*, 31 C. R. C. 77.

2. Where carriers objected to the opening of a proposed crossing by a city, upon the ground that flood water which would be diverted and carried by the improvement contemplated might damage certain railroad fills some distance from the crossing, authorization was granted, subject to conditions properly protecting the carriers in that respect. *P. E. Ry. Co.*, 31 C. R. C. 476, 477.

3. The opening of an additional grade crossing not being justified by public convenience and necessity, and the most feasible solution being the opening of a connecting street diverting traffic to an existing crossing, application to construct such new crossing was denied. *City of Berkeley*, 31 C. R. C. 552, 554.

IV. DIVISION OF COSTS

1. When the installation of a new subway would reduce to a negligible amount the volume of traffic using an existing subway under main line tracks, as well as travel over present grade crossings on a branch line, thirty per cent of the cost of the subway was assessed to the carrier. *Calif. Highway Comm.*, 31 C. R. C. 373, 375.

2. Where the amount of traffic using a crossing will be greatly reduced by the construction of a subway although it is impossible to close the existing road and crossing, the highway should, if contructed, be considered as a new road and the cost of effecting the grade separation apportioned accordingly. *California Highway Commission*, 31 C. R. C. 373, 375.

3. It appearing that while applicant was the California Highway Commission, a road was actually being constructed by the federal government, it was contended that since section 43 (*b*) of the Public Utilities Act does not specifically include the federal government as one of the parties to whom the Commission can ap-

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portion the cost of grade separations the Commission is without authority to apportion the cost between the federal government and the railroad, and that no portion of said cost could be assessed to the carrier. *Held*, that merely because all or some portion of the amount assessed to applicant was to be borne by the federal government, the carrier is not in any way relieved from paying its just proportion of the cost. *California Highway Commission*, 31 C. R. C. 373, 377.

DEPRECIATION

1. No depreciation should be charged against properties which have already been depreciated one hundred per cent. *W. L. Warner*, 31 C. R. C. 365, 366.

2. If a carrier has not in past years set up adequate charges and operating expenses to take care of the depreciation of its property now maturing, such omission is fundamentally of the same nature as an omission adequately to maintain the property. *P. E. Ry. Co.*, 31 C. R. C. 454, 460.

3. Depreciation annuity was calculated by the Commission's engineers on a 5 per cent sinking fund basis for all depreciable property in a rate proceeding, though the carrier had not set up any depreciation for large portions of its property such as roadway and structures, treating all renewals to such property as maintenance charges. *P. E. Ry. Co.*, 31 C. R. C. 454, 459.

4. In an application to issue securities upon the transfer of properties consideration must be given to the fact of accrued depreciation since the purchasing company necessarily assumes the responsibility of replacing the properties which it proposes to acquire. To allow the capitalization of such depreciated property as though no depreciation had occurred would eventually result in gross overcapitalization. *Calif. Water Service Co.*, 31 C. R. C. 327, 330.

DISCRIMINATION

1. As carriers, under section 17 (*a*) 3 of the Public Utilities Act, have authority to issue reduced rate transportation to children attending institutions of learning, while the Commission is not authorized to order such fares in effect, it is assumed that a carrier will grant to school children the most liberal privileges possible. *P. E. Ry. Co.*, 31 C. R. C. 454, 464.

2. Consumers of a utility receiving the same classes of service should pay the same rate, irrespective of their status as stockholders or nonstockholders. *Narbonne Ranch W. Co.*, 31 C. R. C. 548, 550.

3. When a local telephone system is operated as two exchange areas, in one of which switching is performed by another company, the subscribers connected to central offices of the local company have unlimited switching privileges, while calls originating in the other area are charged specified toll rates, the charge depending upon the originating point of the message, discrimination results. *Bass Tel. Lines*, 31 C. R. C. 782, 783.

4. Where defendant carriers do not solicit repair work on privately owned freight cars, but do occasionally accept such work when offered, the failure of defendants to assess tariff switching charges against privately owned cars moving to and from their repair shops places a car building and repair company at a disadvantage and results in an unlawful discrimination in violation of section 19 of the Public Utilities Act. *Brombacher* vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 504, 509.

5. The mere fact that one point is located in proximity to another point is not a deciding factor of the milling in transit privileges applicable at the latter point, when such point is not intermediate. *Cal. Hawaiian Milling Co.* vs. *S. P. Co.*, 31 C. R. C. 665, 666.

6. The extension of service to new consumers for mining purposes while concurrently refusing to supply further irrigation service results in unfair discrimination. *Williams* vs. *Utica Mining Co.*, 31 C. R. C. 602, 606.

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EMINENT DOMAIN

1. Under subsection 7 of section 47 (*b*) of the Public Utilities Act the Commission is empowered to determine the reasonable expenditures necessarily incurred by the utility in a condemnation proceeding which should be assessed against a city in two instances only, where the petition is of the second class: (1) where the political subdivision fails to proceed diligently to submit a proposition to its voters to acquire the properties under eminent domain proceedings; and (2) where the political subdivision fails, if its voters have voted in favor of the acquisition, to file said action in a court of competent jurisdiction within sixty days. *City of Marysville*, 31 C. R. C. 252, 254.

2. There is no provision under the Public Utilities Act which authorizes the Commission to grant such relief when the matter of the acquisition of the properties of a utility has been submitted to the voters within the time allowed by statute and rejected by them. *City of Marysville*, 31 C. R. C. 252, 254.

EVIDENCE

I. In General.
II. Presumptions and Burden of Proof.
III. Relevancy and Materiality.
IV. Best Evidence Rule.

I. IN GENERAL

1. When the showing of one applicant for a certificate is based on the affirmative testimony offered on behalf of another applicant, and the matters have been consolidated for the purpose of receiving evidence and for decision, the testimony of one applicant as to public convenience and necessity must be considered as applicable to both. *Western Motor Transp. Co.*, 31 C. R. C. 690, 700.

II. PRESUMPTIONS AND BURDEN OF PROOF

1. While applicant for authorization to extend and reroute stage service did not support the application by testimony of those actually in need of the proposed service, testimony as to the demands by the public, of record with a city board of public utilities, together with applicant's testimony that he was willing to pioneer the field now occupied by him in part, was held sufficient to justify the granting of the certificate. *F. Atkinson*, 31 C. R. C. 46, 47.

2. The desire of an applicant, unsupported by other testimony, is not affirmative of public need unless there is no existing method of transportation. *Wilmington T. & S. Co.*, 31 C. R. C. 713, 717.

3. If the showing made is not of a nature to warrant the Commisison to make the finding that, in its opinion, the money, property or labor to be procured or paid for by an issue of securities is reasonably required, and the purposes for which the proceeds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income, which finding is required under section 52 of the Public Utilities Act, authorization can not be granted. *Pickwick Stages System*, 31 C. R. C. 746, 749.

III. RELEVANCY AND MATERIALITY

1. In a complaint alleging unauthorized operation as a common carrier, evidence tending to show that defendant was delivering over its regular route parcels collected in another city and forwarded by an authorized carrier was excluded as not being within the issues of the case, the complaint specifically limiting the alleged illegal operation to shipments originating in one city and destined to other designated points. *Coronado Transfer* vs. *United Parcel Service*, 31 C. R. C. 208, 209.

2. Evidence relative to the effect of stage operations on the destruction of various classes of improved highways has no substantial weight or material bearing on the issue of public convenience and necessity. *Western Motor Transp. Co.*, 31 C. R. C. 690, 705.

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3. Letters from shippers storing goods with a transfer and storage company, inquiring as to rates for distribution, are not satisfactory evidence of a demand on the part of the public that the proposed truck service of such company is required. *Wilmington T. & S. Co.*, 31 C. R. C. 713, 715.

IV. BEST EVIDENCE RULE

1. An exhibit and letter of transmittal prepared from the books of a parent corporation, setting forth the cost to a subsidiary stage company of certain buses constructed by the parent corporation, but not showing the details of the profit claimed by the parent corporation, will, upon motion, be stricken from the record upon the ground that the books of the parent corporation, and not the exhibit, constitute the best evidence. *Pickwick Stages System*, 31 C. R. C. 380, 382.

2. Before the Railroad Commission, as before courts of law and equity, witnesses are allowed to appear and present summations of voluminous accounts and records themselves constituting the best evidence of the facts contained therein. Under and by virtue of the Commission's judicial functions, it is empowered to accord full opportunity to cities protesting a rate increase to examine and inspect applicants accounts and records upon which its exhibits are based. (Wigmore on Evidence, Sec. 1230; *Elmira Roofing Co.* vs. *Gould*, 42 Atl. 1002; *People* vs. *Doble*, 53 Cal. App. Dec. 321, 257 Pac. 81; *People* vs. *Sawhill*, 132 N. E. 477.) *Pac. Tel. & Tel. Co.*, 31 C. R. C. 166, 168.

EXPRESS CORPORATIONS

What constitutes, *see* Public Utilities.

FEEDING IN TRANSIT

See Rates IV, 4, (8).

FERRIES

See Rates IV, 2.

FINES AND PENALTIES

1. Defendant warehouseman having wilfully, deliberately and knowingly violated section 17 (*b*) of the Public Utilities Act by charging rates different from those lawfully on file, the attorney for the Commission was directed to bring an action in the superior court for the recovery of penalties. *Calif. W. Assn.* vs. *Kane*, 31 C. R. C. 732, 736.

FOREIGN CORPORATIONS

1. Under section 26 of the Public Utilities Act a foreign corporation is not entitled to transact a public utility business within this state. *Albers Bros. Milling Co.*, 31 C. R. C. 851.

FRANCHISES

Possession of franchise as condition precedent to granting of certificate, *see* Certificates II, 2.

Rate franchises, *see* Rates.

1. A franchise for a grade crossing providing for 18-foot track centers, while the application to the Commission proposed 13-foot track centers, was held sufficient evidence of the consent of the county to the construction, and modification of the franchise was not required before passing on the application. *S. P. Co.*, Decision 19524, Application 14384.

2. When pipe lines and appurtenant

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fixtures of a water utility are installed prior to the dedication of the streets and alleys to public use, a county franchise will not be required. *Belvedere Water Corp.*, 31 C. R. C. 40, 41.

3. The use of easements in the rear of lots in installing water mains eliminates the necessity of a county franchise. *Colony W. Co.*, 31 C. R. C. 280, 281.

GENERAL ORDERS

G. O. 33-A. Supersedes G. O. 33. Rules governing construction of interlocking plants. (31 C. R. C. 150.)

G. O. 67-A. Regulations governing leasing of automotive equipment.

G. O. 75-A. Supplement cancelling Sec. III of G. O. 75, standard type of crossing protection.

ILLEGAL OPERATION

See Automotive Transportation.

As ground for refusing certification, *see* Certificates II, 3.

INCORPORATE RELATIONS

Cost of equipment constructed by parent corporation, *see* Security Issues VI.

1. Where one of two closely related electric railways provides passenger service over the other company's tracks on a particular line at a considerable financial loss, in order to fulfill franchise obligations of the latter company, it was recommended that accurate accounting be kept of revenue and cost of service, and that the operating carrier be reimbursed for such losses as may be incurred. *Peninsular Ry. Co.*, 31 C. R. C. 527, 531.

INTERURBAN RAILWAYS

See Rates IV, 3.

INTEREST

1. The computing of interest during construction at the rate of 7 per cent per annum being unwarranted under existing conditions, an order authorizing the expenditure of a specified amount of proceeds obtained from the sale of securities to pay indebtedness should not be considered as an approval of this charge, or of some other overhead or supervision construction costs, in any proceeding. *San Diego Cons. G. & E. Co.*, 31 C. R. C. 52, 54.

INTERLOCKING PLANTS

1. General Order No. 33-A adopted, superseding General Order No. 33, providing for rules governing interlocking plants on railroads and street railroads. *Re Interlocking Plants*, 31 C. R. C. 150.

INTERSTATE COMMERCE

1. Complainant, purchasing electric current in California for resale in Arizona, having paid defendant utility rates fixed by the Commission higher than those provided for in a prior contract, sought an order authorizing the charging of the contract rate, and awarding reparation of all sums collected in excess of

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such contract rate, on the ground that the order fixing rates imposed a direct burden on interstate commerce. On this theory, to declare such contract rates effective would be just as much an imposition of a burden on interstate commerce as would have been the fixing of rates in the earlier order. *Arizona Edison Co.* vs. *So. Sierras P. Co.*, 31 C. R. C. 609, 611.

2. If the contention that previous orders fixing rates were void is accepted, there is now no burden to be removed and any order of the Commission to that effect would be an idle act. The Commission has no more power to interpret or pass upon the validity of a rate contract than it has, in its regulatory capacity, to fix the rates. Its power to determine rights under private contract is incident only to its general power to regulate. *Arizona Edison Co.* vs. *So. Sierras P. Co.*, 31 C. R. C. 609, 612.

3. As to the contention that the granting of reparation will not constitute a burden upon interstate commerce, there may be a distinction between the power to regulate and the power to grant reparation, but such order may be made only after investigation and determination that an unreasonable, excessive or discriminatory rate has been charged. In the face of prior orders determining that the rates now charged are just and reasonable, and under the pleadings and evidence in the above case, such rates can not now be held unreasonable and excessive. *Arizona Edison Co.* vs. *So. Sierras P. Co.*, 31 C. R. C. 609, 612.

4. When an inter and intra state telegraph utility earns an excessive return upon its entire California business, while purely intrastate business is unprofitable, the Commission will direct an appropriate proceeding before the Interstate Commerce Commission for relief from such excessive costs. *Western Union Tel. Co.*, 31 C. R. C. 760, 763.

LEASE

Of operative rights or automotive equipment, *see* Automotive Transportation.

Rules governing leasing of automotive equipment, *see* General Orders.

MILLING IN TRANSIT

See Rates IV, 4.

MONOPOLY AND COMPETITION

See, also, Certificates.

1. *Per* Carr, *concurring.* The Commission should not be forestalled (in applying the rule of *P. G. & E. Co.* vs. *G. W. P. Co.*, 1 C. R. C. 203, 209-11) in pending applications of other agencies to enter portions of the general field served by a carrier, by an order directing certain improvements which such carrier has indicated its willingness to make. *Marvelous Marin* vs. *Northwestern P. R. Co.*, 31 C. R. C. 400, 408.

2. While through and more expeditious stage service would be desirable for the public traveling to and from a resort country, where the establishment of such seasonal stage service would seriously affect the ability of an existing carrier to continue present daily passenger and express service which was being maintained at a substantial loss throughout the entire year, the volume of business was held not sufficient to justify the establishment of further public transportation. *Pickwick Stages System*, 31 C. R. C. 481, 495.

3. An auto truck line which has for nearly a year neglected to withdraw an apparently unreasonable rate can not, when an application is filed by another line, demand that it be protected from competition. *L. A. Thornewill*, 31 C. R. C. 598, 600.

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MORTGAGE

1. There should be eliminated from a proposed mortgage and/or deed of trust and from bonds a provision giving certain immunity to incorporators, stockholders, officers and directors. *Calif. Water Service Co.*, 31 C. R. C. 417, 419.

2. Mortgages executed without authorization are void. *G. A. Bray*, 31 C. R. C. 661, 663.

OPERATIVE RIGHTS

See Automotive Transportation.

PLEADING AND PROCEDURE

I. In General.
II. Formal Applications.
III. Formal Complaints.
IV. Parties.
V. Hearing.
VI. Scope of Proceedings.
VII. Motions—Inspection of Records.

I. IN GENERAL

1. The Commission in passing upon the nature and character of any proceeding before it, looks always to the substance and purpose of, and not to the form of said proceeding. *G. L. Morrison*, 31 C. R. C. 219, 224.

2. It clearly appearing that an application, or so-called complaint, is in reality a supplemental petition, the mere fact that the proceeding at the time it was filed with the Commission, through inadvertence or otherwise, was given a case or complaint number in no wise affects its real character or purpose. *G. L. Morrison*, 31 C. R. C. 219, 225.

3. Section 5 of the Auto Stage and Truck Transportation Act contemplating that the Commission, in the exercise of a sound discretion may entertain and hear any supplemental petition by an interested or aggrieved party to revoke, alter or amend any certificate, irrespective of whether the decision granting the same has become final, a motion to dismiss such a supplemental petition on the ground of lack of jurisdiction for the reason that it is an indirect and collateral attack upon said decision is not well taken and the motion will be denied. *G. L. Morrison*, 31 C. R. C. 219, 225.

4. So much of the record in prior proceedings before the Commission relating to the early history of a utility, its operating conditions and methods, and actual cost of acquisition of properties, which can not be obtained from any other source, is germane to a rate proceeding and may, upon request, be properly considered as a part of the record therein. *Haines Canyon W. Co.*, 31 C. R. C. 445, 447.

II. FORMAL APPLICATIONS

1. While, under section 5 of the Auto Stage and Truck Transportation Act, the Commission has power to issue or refuse certificates as prayed for, and may attach such conditions and restrictions as public necessity may require, it has been a consistent practice and policy, whenever facts and circumstances justify it, to require every applicant to divulge the names of every stage or truck line, steam railroad or electric railway operating between the points proposed to be served. *G. L. Morrison*, 31 C. R. C. 219, 224.

III. FORMAL COMPLAINTS

1. A motion to dismiss a complaint on the ground that it was not alleged that the acts done were in violation of law, nor that they were done as common carriers for compensation will be denied

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where the alleged acts are clearly set forth and the prayer is that defendants be restrained from continuing such operations. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 233.

IV. PARTIES

1. When an individual is sole owner of automotive operative rights, and together with another designated as a "partner," but who has only a prospective interest in an application to extend such operative right in that he is to be associated with the actual owner in the event that a certificate should be granted, the application of the "partners" can not be considered in any relation to the present operative rights held by the individual. *Sierra Ry. Co.*, 31 C. R. C. 126, 128.

V. HEARING

1. The contention that notice of a hearing of a supplemental petition mailed by the Commission to an applicant was sufficient notice and binding upon said applicant with respect to any right of notice he may have been entitled to as regards the hearing on a different application is without merit, for said supplemental petition having been dismissed for lack or jurisdiction was ineffectual for any purpose whatsoever. *G. L. Morrison*, 31 C. R. C. 219, 224.

VI. SCOPE OF PROCEEDINGS

1. While, in an application by a water utility for an interpretation of its rules and regulations, the utility will not be directed to make certain recommended refunds, should such refunds not be made within a reasonable time, necessary steps will be taken to insure full compliance with such recommendations. *Fontana Domestic W. Co.*, 31 C. R. C. 117, 125.

2. Before any action is taken with respect to the abandonment of any facilities, such matters must be presented to the Commission by means of an appropriate application on the part of the carrier, and no final determination of such matters will be made in a complaint alleging poor service. *Marvelous Marin* vs. *Northwestern P. R. Co.*, 31 C. R. C. 400, 404.

3. In an application to lease an operative right, evidence of protestants to the effect that service had been abandoned was excluded as constituting a collateral attack upon the validity of such existing operating right. The question of abandonment can be raised only in a direct proceeding. *Pickwick Stages System*, 31 C. R. C. 410, 411.

VII. MOTIONS—INSPECTION OF RECORDS

1. In passing on a motion of protesting cities to inspect books and records of an applicant seeking an increase in rates, and which has filed exhibits in the form of summations of such books and records, the Railroad Commission is acting in its judicial or quasi-judicial capacity, and must look to the practices of the courts. *Pac. Tel. & Tel. Co.*, 31 C. R. C. 166, 168.

2. In granting protestants' motion to inspect books and records, such records need not and should not be taken from the custody and control of the applicant; they should not be subject to examination and inspection either at a time or in a manner which would unnecessarily interfere with the current business of applicant or with an investigation being conducted by the Commission by virtue of its inquisitorial powers, but the inspection and examination should be surrounded with appropriate safeguards. *Pac. Tel. & Tel. Co.*, 31 C. R. C. 166, 169.

PRIVATE CARRIERS

See Automotive Transportation III.

PUBLIC UTILITIES

1. A company rendering a store door pick-up and store door delivery service for the transportation of freight between two cities, consolidating individual packages into one shipment moving by railroad at tariff rates, is an express corporation within the meaning of section 2 (*k*) of the Public Utilities Act. *E. E. Frost & Co.*, 31 C. R. C. 668, 670.

2. Whether a rail carrier performs service for an express corporation under contract or at the regular tariff rates is not material to the determination of the status of the latter under section 2 (*k*) of the Public Utilities Act. *E. E. Frost & Co.*, 31 C. R. C. 668, 670.

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RATES

I. In General.
II. Rate Contracts and Franchises.
III. Reasonableness—Factors Considered.
1. In general.
2. Comparison of rates.
3. Cost of service.
4. Separate communities served.
IV. Particular Utilities.
1. Automotive transportation.
2. Ferries.
3. Interurban railways.
4. Railroads.
5. Street railroads.
6. Telephone utilities.
See, also, Discrimination.

I. IN GENERAL

1. Where horizontal fare increases would not produce a reasonable return, present tariffs were suspended and applicant was authorized to establish experimental fares for a trial period only, the proceeding being held open for a period of one year. *P. E. Ry. Co.*, 31 C. R. C. 454, 467.

II. RATE CONTRACTS AND FRANCHISES

1. *Per* Carr *concurring.* While five-cent fare franchise provisions are subject to change by the state in the exercise of its police power, agreements of this character should not be brushed aside or ignored in the absence of clear and convincing evidence that adherence to them will work grave injustice to the carrier. *L. A. Ry. Corp.*, 31 C. R. C. 383, 390.

III. REASONABLENESS—FACTORS CONSIDERED

1. In general

1. *Per* Carr. While the need of increased revenue may have been established such revenue should be sought from casual or occasional riders rather than regular riders. *Key System Transit Co.*, 31 C. R. C. 809, 817.

2. One of the tests to be applied in the determination of reasonableness of rates is whether or not such rates are sufficient to pay operating expenses, taxes, and to return to the carrier a fair return on the value of the property devoted to public service. *P. E. Ry. Co.*, 31 C. R. C. 454, 457.

2. Comparison of rates

1. A comparison of rates is of little or no probative value when it is not shown to what extent, if any, the commodity under consideration comes into competition with the commodities instanced. *Pioneer Rubber Mills* vs. *S. P. Co.*, 31 C. R. C. 319, 320.

2. Comparisons of switching charges for the movement of empty freight cars at other points, when the record is devoid of any showing as to the operating conditions prevailing in the terminal districts where applicable, or that the rates are intended to cover a comparable movement, are of little probative value. *Brombacher* vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 504, 508.

3. Comparison of proposed truck rates with rail and other comparable rates for similar distances and movements is not necessary when the rates sought are not expected to produce a return upon the investment, and no competitor is protesting. *Motor Service Express*, 31 C. R. C. 523, 526.

4. The fact that lower rates are in effect in certain territory not shown to be competitive does not warrant a finding that the assailed rates are discriminatory. *Western C. M. Assn.* vs. *S. P. Co.*, 31 C. R. C. 739, 741.

5. A showing of commodities not of the same general nature, value and vol-

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ume of movement is of little probative value in a reparation proceeding. *Van Camp S. F. Co.*, vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 837, 839.

6. Although compared rates yield lower revenue per car mile, when no information is vouchsafed as to the comparative conditions under which the respective services are rendered, it is necessary to review the earnings yielded under the rates assailed in the light of circumstances under which the traffic moves. *Calif. C. Assn.* vs. *Minarets & W. Ry. Co.*, 31 C. R. C. 857, 858.

7. The exceptional situation and circumstances of a weak line operating at a loss make rate comparisons per mile with movements over standard trunk lines in other sections wholly out of the question (*Cotton Mills Products Co.* vs. *A. & V.*, 120 I. C. C. 473). *Calif. C. Assn.* vs. *Minarets & W. Ry. Co.*, 31 C. R. C. 857, 859.

3. Cost of service

1. When a telegraph utility has established that intrastate press rates result in an out-of-pocket loss and the increase requested will still leave the business a profitless one, applicant is entitled to the specific relief sought. (*Northern Pacific R. R. Co.* vs. *North Dakota*, 236 U. S. 585.) *Western Union Tel. Co.*, 31 C. R. C. 760, 761.

4. Separate communities served

1. As to the contention that particular interurban lines should be considered by themselves, and that rates be based on earnings of the respective lines, to segregate individual interurban lines or to pick out an individual line of the local service in any city, for the establishment of particular rates on such lines, would not only complicate the problem of fixing a reasonable rate, but would practically amount to unjust discrimination. (*Pacific Electric Railway Co.*, 22 C. R. C 236, 244.) *P. E. Ry. Co.*, 31 C. R. C. 454, 464.

IV. PARTICULAR UTILITIES

1. Automotive transportation

1. Proportional and joint rates are subject to regulation under the general power of the state to regulate common carriers. Section 33 of the Public Utilities Act refers to joint rates, but this section has no application to carriers by motor truck nor is there any provision in reference thereto in the Auto Stage and Truck Transportation Act. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 234.

2. Because of essential differences between rail and motor truck transportation, the Commission must adopt different principles in regulating the operations of the two classes of carriers. Motor carriers should be definitely limited in the field of their operations and not permitted to deviate from their prescribed routes nor enlarge operative rights without obtaining a certificate. Filing of joint rates by owners of distinct operative rights is to an extent an establishment of a through service, a linking-up of the two lines, and to that extent amounts to an enlargement of the two operative rights for which a certificate must be obtained. (*Western Transport Co.*, 20 C. R. C. 1038; *Blair* vs. *Coast Truck Lines*, 21 C. R. C. 530; *San Jose Transportation Co.*, 24 C. R. C. 660; *Highway Transport Co.*, 26 C. R. C. 942.) *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 234.

3. Consolidated package rates are entirely distinct from ordinary class rates, and must be specifically provided for in a carrier's tariffs. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 237.

4. A joint stage fare was authorized in order to meet the fare charged by other carriers and to make the charge over four routes uniform. *Pickwick Stages System*, 31 C. R. C. 408, 410.

5. Increased rates were authorized when the additional revenue sought would not pay a return on the investment, but would equalize rates and relieve applicant of the burden of undue losses on its operation on two divisions. *Motor Service Express*, 31 C. R. C. 523, 526.

2. Ferries

1. *Per* Carr. It is not fair to require transbay riders to keep a traction division of a carrier going if there is any way by which its own patrons can do this. *Key System Transit Co.*, 31 C. R. C. 809, 817.

2. *Per* Carr. Transbay ferry riders should not be required to carry the entire burden of an unprofitable traction system. *Key System Transit Co.*, 31 C. R. C. 809, 817.

3. Interurban railways

1. There being an excessive number of forms of commutation tickets, some

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used only to a very limited extent, it was held to be in the public interest to eliminate all but the two most popular forms of commutation tickets. *P. E. Ry. Co.*, 31 C. R. C. 454, 463.

2. In revising a rate structure it was suggested that all fares be calculated to the nearest five-cent multiple in order to avoid complication and confusion resulting from fares of odd cents. *P. E. Ry. Co.*, 31 C. R. C. 454, 464.

4. Railroads

1. A private car may have either the status of freight or may be an instrumentality of commerce. (*Procter & Gamble* vs. *C. H. & D. Ry. Co.*, 19 I. C. C. 56, *Pacific E. & C. Co.* vs. *C. R. I. & P. Ry. Co.*, 56 I. C. C. 247.) If of the latter status, it must be employed in the carriers' service and is in fact a railroad car for which the carrier pays the owner or licensee thereof for each mile it travels in line-haul service. If the car is not in the carrier's service, it reverts to a private car and becomes subject to the applicable freight charges. (*McCloud River Railway Co.* vs. *Southern Pacific Company*, 56 I. C. C. 287.) *Brombacher* vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 504, 506.

2. Privately owned cars moving empty to and from repair shops are not in a carrier's service as instrumentalities of commerce when actually tendered and moved as ordinary articles of freight. *Brombacher* vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 504, 507.

3. In finding railroad rates unreasonable and discriminatory, rates were not prescribed to all points covered by the complaint, carriers being expected to establish rates comparable with those prescribed, distance considered. *Pacific etc. Corp.* vs. *A. T. & S. F. Ry. Co.*, 31 C. R. C. 764, 766.

4. When distance scales of rates are established, the deviations from such scales should be consistent and without discrimination. *F. W. Gomph*, 31 C. R. C. 778, 780.

5. That there is tonnage substitution at transit and storage points, terminal railroad providing for such practice, does not constitute discrimination (26 I. C. C. 204, 210) *Cal. Hawaiian M. Co.* vs. *S. P. Co.*, 31 C. R. C. 559, 561.

6. Milling in transit is a special arrangement which may be originated by carriers the same as they may voluntarily publish subnormal rates to meet water competition, and the Commission will not ordinarily establish or extend milling in transit unless it is shown that the voluntary action of the carriers results in unlawful discrimination. *Cal. Hawaiian M. Co.* vs. *S. P. Co.*, 31 C. R. C. 559, 561.

7. Complainant carrier, being the originator of the traffic, was held entitled to the longest reasonable haul, and could not, under ordinary circumstances, be asked to short-haul itself because of the desire of a third carrier to interject itself as a participating carrier. The establishment of a through route and joint rate from points on one carrier to points on another carrier being desirable in the public interest, defendant carrier's failure and refusal to join in such a route was discriminatory and prejudicial to complainant carrier. *W. P. R. Co.* vs. *N. W. P. R. Co.*, 31 C. R. C. 321, 324.

8. "Rates to feeder stations and return to point of origin less than twice the one-way rates fall under the category of transit privileges, and neither this Commission nor the Interstate Commerce Commission will ordinarily require carriers to extend feeding in transit privileges unless it be upon proof of unlawful discrimination, and each case must be determined according to the facts, circumstances and conditions presented." *Western C. M. Assn.* vs. *S. P. Co.*, 31 C. R. C. 739, 741.

9. The rate for a two-line haul may properly be higher than the rate for a single-line haul (*Piedra Rock Co.* vs. *S. P. Co.*, 31 C. R. C. 895), and a complaint alleging rates to be unreasonable to the extent that they exceeded rates contemporaneously maintained for a single-line haul on the assumption that a railroad, being owned jointly by two other carriers, should be treated as a part of the latter two lines for rate making purposes, was dismissed, the record indicating the carrier to be a separate corporate entity, operated as an independent line, and handling traffic at interchange points in the same manner as other carriers independently operated. (*Albers Bros. Milling Co.* vs. *S. P. Co.*, 30 C. R. C. 17.) *Union Paving Co.* vs. *Sunset Ry. Co.*, 31 C. R. C. 563, 565.

5. Street railroads

1. When present street railway rates do not yield sufficient revenue to meet out-of-pocket operating costs, excluding any depreciation allowance, and it is by no means certain that conditions justify

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a continuation of service or that any fare structure will produce enough money to pay operating expenses and yield any return, the situation calls for the trial of experimental fares. *S. Barbara & S. Ry. Co.*, 31 C. R. C. 11.

2. Experimental street railway fare of ten cents authorized, with a twenty-five-cent weekly identification card or pass entitling the holder to a five-cent fare. *S. Barbara & S. Ry. Co.*, 31 C. R. C. 11, 12.

3. With one-man operation of cars the advantages accompanying a single coin fare and the elimination of the use of pennies is a distinct advantage, and reflects in better and faster service. *Peninsular Ry. Co.*, 31 C. R. C. 527, 531.

4. Two electric railways in the same community, being under the same management and same wage schedules, rates of fare on each should be the same, and it is desirable that the tokens of the two companies be interchangeable and good for transportation on the cars of either line. *Peninsular Ry. Co.*, 31 C. R. C. 527, 532.

5. The Commission refused to order in effect any of various suggested forms of street railroad fares where any such action would be in the nature of questionable experimenting with a situation extremely hazardous both to the carrier and to the public. *Key System Transit Co.*, 31 C. R. C. 809, 814.

6. Telephone utilities

1. In sparsely settled territory, it is important that charges for exchange service be kept as low as possible, for communication by telephone may frequently be an absolute necessity. *Bass Tel. Lines*, 31 C. R. C. 782, 784.

2. It is not proper to fix toll telephone rates on a one-minute initial period basis, as initial toll rates in California are generally based on a three-minute initial period. *Bass Tel. Lines*, 31 C. R. C. 782, 785.

3. When subscribers of several farmer line telephone associations have had the right to use lines owned and operated by other farmer line associations without charge other than that fixed monthly charge made for their local exchange switching privileges, as the proposal of one association to apply toll charges to all users would affect all other associations and their subscribers who are not parties to the proceeding, the application will be dismissed without prejudice. *Lake County Tel. Assn.*, 31 C. R. C. 1.

4. The construction of special telephone lines maintained for toll service exclusively, where not now existing, is a condition precedent to any effective or equitable application of toll charges. *Lake County Tel. Assn.*, 31 C. R. C. 1, 2.

RECORDS

Inspection of, *see* Pleading VII.

REPARATION

1. A water utility having charged a consumer a rate in excess of the schedule of rates on file with the Commission was ordered to refund all amounts collected in excess of the established rates. *Berti* vs. *Rovai*, 31 C. R. C. 59, 61.

2. In a complaint seeking reparation, where the charges assessed have not been actually collected, amended freight bills will eliminate the claimed excessive amounts. *Brombacher* vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 504, 509.

3. Section 71 (*b*) of the Public Utilities Act provides that complaints seeking reparation shall be filed within two years from the time the cause of action accrues. The Railroad Commission and the Interstate Commerce Commission have followed the practice of considering an informal complaint as having the same force and effect as a formal complaint. *Van Camp S. F. Co.* vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 837, 840.

4. Generally a subsequent rate reduction is not in and of itself sufficient to warrant an award of reparation. However, every shipper is entitled to a reasonable rate, whether commodity or class, and where the prior rate is in question the issues must be decided on their merits regardless of the fact that the rate upon which reparation is sought may have been voluntarily established. *Van Camp S. F. Co.* vs. *L. A. & S. L. R. Co.*, 31 C. R. C. 837, 839.

5. Where rates are found to be unduly preferential, prejudicial and discriminatory, but not unreasonable, the burden of

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proof is upon complainant to establish that it has actually been damaged and that such damage was the direct result of such rate adjustment. It can not be presumed that the amount of damage is the difference between the rate paid and the rate established by the Commission, and when evidence of damage is lacking reparation will be denied. (*Penn. R. Co.* vs. *International Coal Co.*, 230 U. S. 184.) *Albers Bros. Milling Co.*, vs. *S. P. Co.*, 31 C. R. C. 95.

6. Reparation in a proceeding involving undue prejudice and disadvantage will be denied where damage is not shown to have been sustained. (*Penn. R. Co.* vs. *International Coal Co.*, 230 U. S. 184; *L. A. County* vs. *Pacific Electric Rwy.*, 27 C. R. C. 337; 28 C. R. C. 143; *Turner* vs. *Pacific Electric Rwy. Co.*, 27 C. R. C. 404; *Vernon O. R. Co.* vs. *Pacific Electric Rwy. Co.*, 27 C. R. C. 442; *Coal Switching Cases*, 36 I. C. C. 226.) *Croley* vs. *A. T. & S. F. Ry. Co.*, 31 C. R. C. 625, 627.

7. On a finding of prejudice or discrimination, reparation will be denied in the absence of proof of damage suffered. *Cal. Hawaiian M. Co.* vs. *S. P. Co.*, 31 C. R. C. 665, 667.

RES JUDICATA

1. A conclusion in a prior decision denying a certificate that defendant was not then seeking business from the public generally, is not determinative of the public nature of the trucking business performed, in a complaint alleging common carrier operation without a certificate. *Thornewill* vs. *Gregory*, 31 C. R. C. 843, 844.

RETURN

1. Abnormal charges for legal expenses and repairs to buildings, which may have reasonably been expected not to recur annually, should be amortized over a period of years. *Highland D. W. Co.*, 31 C. R. C. 183, 185.

2. An abnormal expense in connection with the cleaning of settling basins of a water utility, not likely to occur annually, should be amortized over a period of years. *Imperial Utilities Corp.*, 31 C. R. C. 539, 542.

3. Extraordinary and temporary expenses should not be charged against a short period, especially if such extra costs result in permanent benefits to the carrier. (*Pacific Electric Railway Co.*, 20 C. R. C. 1087.) *P. E. Ry Co.*, 31 C. R. C. 454, 460.

4. The cost of excavation necessary in connection with the regular cleaning of canals and sedimentation basins and the removal of silt therefrom should be allocated to operating and maintenance expense, and not included in an estimate of reproduction cost new. *Imperial Utilities Corp.*, 31 C. R. C. 539, 542.

5. The uniform classification of accounts provides that accrual of depreciation on way and structures, power plant buildings and power plant and substation equipment is left optional with the carrier until the Interstate Commerce Commission shall direct otherwise. Thus, it can hardly be contended that the classification compels the charging to operating expenses of the cost of renewals of existing materials. If, in an estimate of operating expenses, in addition to adequate allowance for current depreciation, a further allowance was made for matured depreciation such estimate would be rejected as burdening future ratepayers with a duplication of this item. *P. E. Ry. Co.*, 31 C. R. C. 454, 460.

6. *Per* Carr *concurring*. While operation of motor buses by a street railway has resulted in an out-of-pocket loss, if, with more experience in this line of business these losses can not be reduced, the rates for motor bus service should be increased rather than burdening the rail lines with an unprofitable operation. *L. A. Ry. Corp.*, 31 C. R. C. 383, 389.

7. *Per* Carr, *concurring*. While a utility may not secure each year a uniform return, say, of seven per cent., if the processes of regulation are so shaped that a utility on the average, under normal conditions and with proper operating economy and efficiency, earns a reasonable return on the fair value of its property, the utility has no cause for complaint. *L. A. Ry. Corp.*, 31 C. R. C. 383, 390.

8. When operating methods of a street railway might be so changed as to result in large reductions in the cost of operation and still enable the rendering

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of efficient and adequate service, and the company has made no effort to take advantage of these economies which would result in receiving a full and adequate return, an increase in rates will not be authorized. *L. A. Ry. Corp.*, 31 C. R. C. 383, 385.

9. Remaining water consumers should not be required to pay a return upon overbuilt facilities given outright to the utility, and installed in territory practically undeveloped from which negligibly small revenues are received. *Monterey Co. W. W.*, 31 C. R. C. 852, 855.

10. When present distribution facilities are considerably in excess of those necessary to supply existing demands, it would be unfair to place upon present consumers the full burden of paying for an unreasonable proportion of facilities awaiting possible future demands and a rate increase will not be granted such a utility when earning a return slightly in excess of 6 per cent. *Highland D. W. Co.*, 31 C. R. C. 183, 186.

11. It is unfair and unreasonable to require present consumers to pay a full return upon the entire alleged investment in a system designed to serve a far greater population in the future. *Haines Canyon W. Co.*, 31 C. R. C. 445, 453.

12. The worth of a subsidiary electric railway to a parent railroad as a collector and distributor of the parent company's passenger and freight traffic is a factor to be considered in determining a reasonable rate of return to be allowed the subsidiary. *P. E. Ry. Co.*, 31 C. R. C. 454, 461.

13. With many utilities the Commission has held that a 7 per cent return was not excessive. The Interstate Commerce Commission has considered 5.75 per cent a fair return for steam railroad carriers. (58 I. C. C. 220; 68 I. C. C. 676; 100 I. C. C. 79; 129 I. C. C. 25.) Six per cent was allowed a street and interurban railway classified as an interstate carrier. *P. E. Ry. Co.*, 31 C. R. C. 454, 461.

SCHEDULES AND TARIFFS

1. Fares under a tariff being published as applying between La Mesa, Grossmont and El Cajon only, although the title page of the tariff reads between San Diego and El Cajon, and intermediate points, the fare schedule of the tariff not corresponding to the title page would not technically permit the serving of intermediate points. *San Diego Elec. Ry. Co.*, 31 C. R. C. 18, 19.

2. Establishment of a comprehensive, equitable and uniform rate structure governed by a proper classification is to be desired in the interest of the shipping public and of the carrier. Authorization to adopt a freight classification was denied where financial statements and figures presented were so conflicting and erroneous that the record totally failed to show a justification for the proposed adjustment. *L. A. Monroe*, 31 C. R. C. 302, 304.

SECURITY ISSUES

I. In General.
II. Purchase of by Another Utility.
III. Necessity of Valuation.
IV. Jurisdiction, Powers and Duties of Commission.
V. Nature and Kind of Securities.
VI. Purpose.
VII. Amount.
VIII. Factors Affecting Issuance.
IX. Interest.
X. Use of Proceeds.
XI. Redemption.
XII. Conditions Upon Which Authorized.

I. IN GENERAL

1. One of the most important functions entrusted to the Commission is that of regulating and supervising the issuance of securities, and from its inception

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the Commission has pursued a conservative policy, scrutinizing with great care all projects calling for the distribution of such evidences of ownership or indebtedness to the public. *Calif. Water Service Co.*, 31 C. R. C. 327, 329.

2. Authorization to issue securities is permissive only, and not in any way compulsory upon applicant or an assumption of the duties of directors and officers. *Pickwick Stages System*, 31 C. R. C. 746, 750.

3. The granting of certificates imposes no obligation on the Commission to permit applicant to capitalize through the issuance of stocks and bonds the moneys it may expend to render public utility service. *Benbow Power Co.*, 31 C. R. C. 849, 850.

II. PURCHASE OF BY ANOTHER UTILITY

1. When the consideration to be paid upon the acquisition of stock of another utility was substantially in excess of the cost of that company's properties as shown by its balance sheet, authorization was granted subject to the condition that not more than a specified amount of the purchase price per share could be charged to an asset account or capitalized, and that the difference must be charged to miscellaneous debits to profit and loss. *So. Cal. Ed. Co.*, 31 C. R. C. 262, 263.

2. The granting of an application to purchase all the stock of another utility obviously can not commit the Commission to the approval of any particular form of financing such transaction. *Gt. Western Power Co.*, 31 C. R. C. 421, 422.

III. NECESSITY OF VALUATION

1. In a proceeding involving the transfer and recapitalization of public utility properties it is not necessary that the Commission determine the present value of the lands involved. *Santa Cruz Counties Utilities*, 31 C. R. C. 32, 35.

2. The granting of an application to transfer properties and to issue securities does not necessitate the determination of the value of water rights which it is alleged are owned by the vendee company. *P. E. Ry. Co.*, 31 C. R. C. 473, 475.

IV. JURISDICTION, POWERS AND DUTIES OF COMMISSION

1. As to a request for authorization to issue and sell additional common stock to common and/or preferred stockholders only, the Commission made no determination, nor believes it to be within its jurisdiction to make such a determination as to whether or not a utility has the right to limit the offering of the common stock to those two classes of stockholders, and the order authorized the issue of stock to applicant's present stockholders, their successors and assigns (29 C. R. C. 463, 464) *So. Cal. Ed. Co.*, 31 C. R. C. 216, 218.

2. Where a utility had issued stock, caused the incorporation of a Nevada corporation, transferred its assets to the latter corporation, which later forfeited its charter, and exchanged its stock for stock of the Nevada corporation, authorization was granted to issue, or reissue shares of its stock for stock of the Nevada corporation in the same ratio as the original conversion was made, upon retransfer of the assets of the Nevada corporation to applicant, although ordinarily applications of such a nature would be denied. *Cons. Motor Freight Lines*, 31 C. R. C. 545, 546.

3. Although revenue obtained from storage is nominal, a corporation engaged in a public utility business must obtain permission to issue securities. *Ontario F. & M. Co.*, 31 C. R. C. 613, 614.

4. The Commission has no jurisdiction over the issuance of securities by a foreign corporation. *Albers Bros. Milling Co.*, 31 C. R. C. 851.

V. NATURE AND KIND OF SECURITIES

1. The purchase of property subject to a mortgage amounts to an assumption of the indebtedness, and such an assumption should be authorized by the Commission. *San Juan W. Co.*, 31 C. R. C. 307, 309.

2. An agreement whereby a part of the purchase price is payable upon the granting of authorization to transfer properties and the balance payable in monthly installments, *held* to constitute an evidence of indebtedness, the execu-

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tion of which must be authorized by the Commission. *F. G. Gansner*, 31 C. R. C. 312, 314.

3. A provision in a mortgage and/or deed of trust that additional bonds may be certified by the trustee in amount equal to not exceeding 80 per cent of the cash cost or the fair value, should be modified so that the trustee may not certify bonds in excess of 60 per cent of said cash cost or fair value, whichever is less. *Calif. Water Service Co.*, 31 C. R. C. 327, 337.

4. It is the policy of the Commission, except under extraordinary conditions, to authorize the issue of bonds in amounts not exceeding 60 per cent of the cost or reasonable value, whichever is less, of assets acquired. *Calif. Water Service Co.*, 31 C. R. C. 417, 420.

5. In authorizing the execution of a mortgage and/or deed of trust prohibiting the trustee from certifying bonds in excess of 75 per cent of the cost or reasonable value, whichever is less, of assets acquired, the Commission will be under no obligation to authorize the issue of bonds up to 75 per cent of said cost or reasonable value. *Calif. Water Service Co.*, 31 C. R. C. 417, 420.

VI. PURPOSE

1. After authorization to use a specified amount of proceeds obtained from the sale of securities to finance the cost of automotive equipment, if the carrier pays more therefor to a parent construction corporation, such excess must be obtained from some source other than the issue of securities and must be charged to surplus account and not to plant and equipment or operating expense accounts. *Pickwick Stages System*, 31 C. R. C. 49, 51.

2. Salary of a general manager and traveling expenses should not be paid through the issue of stock, bonds or other evidence of indebtedness authorized by this Commission. *Tracy Gas Co.*, 31 C. R. C. 170, 172.

VII. AMOUNT

1. When utilities pay more for public utility properties than the actual or estimated historical cost, including land at present value, the difference between such cost and the purchase price shall be charged to surplus and not capitalized through the issue of securities. (12 C. R. C. 485, 16 C. R. C. 799, 21 C. R. C. 858, 28 C. R. C. 361, 28 C. R. C. 585, 28 C. R. C. 625, 30 C. R. C. 346.) *Tuolumne Co. E. P. & L. Co.*, 31 C. R. C. 189, 190.

2. After the granting of authorization to a purchasing company to issue stock in payment for properties to be acquired, such stock may be distributed among the selling corporations in such amounts as may be determined by applicants. *Motor Freight Term. Co.*, 31 C. R. C. 264, 268.

3. In authorizing the consolidation of the properties of several automotive transportation companies and the issuance of securities therefor by the purchasing company, no consideration was given to the reported increase in land value of terminal properties owned by the purchasing company and not being transferred. *Motor Freight Term. Co.*, 31 C. R. C. 264, 268.

4. Public utility securities should be based upon sound, conservative and, in so far as possible, non-fluctuating values. (*Southen Counties Gas Co.*, 16 C. R. C. 799; *Harbor City Water Company*, 21 C. R. C. 638; *Shasta Transit Co.*, 24 C. R. C. 165; *Golden Gate Ferry Co.*, 28 C. R. C. 268; *Peerless Stages*, 30 C. R. C. 346; *Riverton & Palmyra Water Co.*, (N. J.) P. U. R. 1918B, 240; *Penna. Water Service Co.*, P. U. R. 1927E, 657.) *Calif. Water Service Co.*, 31 C. R. C. 327, 330.

5. To base refinancing capitalization upon an estimated "reproduction cost new" would create a situation in which even slight variations in the prices of public utility materials and supplies might quickly wipe out a part, or even the whole of the equities possessed by common stockholders. *Calif. Water Service Co.*, 31 C. R. C. 327, 330.

6. A recapitalization of operating properties upon a basis which would show a return of only three or four per cent upon the proposed common stock is not in the public interest. *Calif. Water Service Co.*, 31 C. R. C. 327, 332.

7. The Commission has never allowed the capitalization of potential values, nor has it permitted public utilities, after a period of operation, to refinance or recapitalize their properties upon such a basis that the outstanding securites thereof would be increased to reflect an alleged "going concern value" claimed to

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have been established subsequent to the construction of the properties in question. *Calif. Water Service Co.*, 31 C. R. C. 327, 334.

8. Upon the consolidation of several properties and the issuance of securities, the Commission will not determine the amount of securities which may be delivered to a particular vendor in payment, but will fix the maximum amount which may be issued for all of the properties. *Calif. Water Service Co.*, 31 C. R. C. 327, 335.

9. Where purchasers of operating public utility properties have desired or agreed to pay more for such properties than it has been found reasonable or proper to allow in the form of securities, the Commission has required the purchasing companies to charge such over cost to surplus. (*San Diego Consolidated G. & E. Co.*, 10 C. R. C. 230, 236; 12 C. R. C. 481, 485; *Tuolumne County E. P. & L. Co.*, 31 C. R. C. 189; *Southern California Edison Co.*, 31 C. R. C. 262.) Applicants being a new corporation having, as yet, no surplus, it was provided that such over cost be charged to a suspense account from which all charges should be amortized by deductions from gross corporate income, or by charges to surplus. *Calif. Water Service Co.*, 31 C. R. C. 327, 336.

10. The Commission will not authorize the issuance of $100,000 of stock in payment for properties and assets in which the net investment, after deducting estimated accrued depreciation and liabilities to be assumed by the purchaser, is reported at $72,488.75. *Rio Vista Lightcrage Co.*, 31 C. R. C. 432, 434.

11. The Commission has no authority to authorize the issue of stock against operating losses. *G. A. Bray*, 31 C. R. C. 661, 662.

12. Indebtedness should be considered as part of the capitalization of a utility corporation, and upon the payment of such debt the issue of additional stock may be authorized. *G. A. Bray*, 31 C. R. C. 661, 663.

13. In the event that utilities construct their own properties, it is not the practice to allow the addition to actual construction costs of a contractor's or manufacturer's profit, and in authorizing the issue of securities to purchase equipment built by a holding company, no additional allowance was made for a return on any investment of the holding company or manufacturer's profit over and above a reasonable cost for such equipment. *Pickwick Stages System*, 31 C. R. C. 746, 752.

14. In authorizing an issue of securities upon transfer of properties an allowance for organization expenses, franchises, and street assessments should be added to original estimated cost. *No. Sac. L. & W. Co.*, 31 C. R. C. 769, 771.

VIII. FACTORS AFFECTING ISSUANCE

1. The mere fact that in 1921 applicant executed an instrument providing for the issue in 1927 of 7 per cent notes is not in itself sufficient reason for the Commission to authorize now the issue of the notes. *So. Cal. Tel. Co.*, 31 C. R. C. 255, 258.

2. An application for permission to issue stock against properties should be filed after the ultimate vendee has actually acquired title thereto and a utility will not be authorized to issue its stock as payments are made under an agreement providing for ten annual payments; title not to be conveyed until full purchase price is paid. *Willits Water Co.*, 31 C. R. C. 442, 443.

IX. INTEREST

1. Authorization to issue 7 per cent notes for the purpose of financing improvements of property is not to be considered as an obligation on the Commission to recognize, in the future, the interest rate on the notes as indicative of the cost to applicant of its borrowed money. *So. Cal. Tel. Co.*, 31 C. R. C. 255, 259.

X. USE OF PROCEEDS

1. While a utility used part of bond proceeds for purposes not authorized by the Commission, where this was done because of economies effected thereby, a detailed schedule of all work done and the purposes for which proceeds were expended was filed, and the utility did not wilfully and deliberately violate the order of the Commission, such expenditures were approved. *Conservative W. Co.*, 31 C. R. C. 13, 14.

2. An automotive transportation company will not be authorized to use an excessive amount of proceeds from the sale of securities to pay for equipment constructed by a parent company, as the

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Commission does not look with favor on the practice of permitting a construction company to profit at the expense of a public utility when the construction company controls the public utility or is owned or controlled by the same interests which own or control the utility. *Pickwick Stages System*, 31 C. R. C. 49, 50.

3. When no detailed statement of a utility's proposed construction expenditures has been filed, the Commission will authorize only the expenditure of a limited amount of proceeds from the sale of stock authorized, and such authorization is not to be construed as an approval of the total reported uncapitalized expenditures. *San Diego Cons. G. & Co.*, 31 C. R. C. 52.

XI. REDEMPTION

1. In fairness to bondholders a company should not be permitted to redeem its bonds on the first day of any calendar month, but redemption of bonds should occur only on the dates when the semi-annual interest is due and payable. *Parr Terminal Co.*, 31 C. R. C. 865, 867.

XII. CONDITIONS UPON WHICH AUTHORIZED

1. It was required as a condition precedent or concurrent with security issuance that the vendee acquire, free and clear of all encumbrances, all of the properties or stock (except cash for working capital) described in the application. While recognizing that some one had agreed to pay more than the amount of securities authorized for the properties or stock, no pronouncement was made as to such alleged agreement, nor did the Commission attempt to fix the price which might be paid for the properties by the purchaser. *Calif. Water Service Co.*, 31 C. R. C. 327, 336.

2. A subsidiary company was authorized to issue notes to a parent corporation on condition that the notes be issued as nonnegotiable notes and that they contain a provision obligating the subsidiary to pay both principal and interest only out of surplus available for distribution as dividends to holders of common stock or from contributions by, or assessments on, such common stockholders, and that none of said payments be made from cash realized from the sale of assets or from borrowed money or offset by its reserve for accrued depreciation, and that payments, when and as made, be charged to surplus. *Calif. Water Service Co.*, 31 C. R. C. 417, 419.

3. The Commission may attach to the exercise of authorization to issue securities such conditions as it may deem reasonable and necessary. *Pickwick Stages System*, 31 C. R. C. 746, 750.

4. Securities have often been authorized on condition that applicant should charge a portion of the purchase price of equipment to surplus. (12 C. R. C. 485; 15 C. R. C. 799; 21 C. R. C. 858; 28 C. R. C. 585; 28 C. R. C. 625 and 28 C. R. C. 361.) *Pickwick Stages System*, 31 C. R. C. 746, 750.

SERVICE

I. Duty of Utility to Render Service.
II. Extensions.
III. Abandonment or Discontinuance.
IV. Accessories and Connections.
V. Conditions Precedent to Service.
VI. Particular Utilities.
See, also, Discrimination.

I. DUTY OF UTILITY TO RENDER SERVICE

1. Public utilities must not wait until competition is at their door before improving inefficient service, correcting unreasonable rates, or making necessary extensions. *P. G. & E. Co.*, 31 C. R. C. 298, 301.

2. A utility owes a duty to that portion of the public which seeks to obtain service as well as to that portion of the public which is already being served. Only until the time of threatened competition shall an existing utility be allowed to put itself in such a position with reference to its patrons that the Commission may find that such patrons are adequately served at reasonable rates. (*P. G. & E. Co.* vs. *Great Western P. Co.*,

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1 C. R. C. 103.) *P. G. & E. Co.*, 31 C. R. C. 298, 301.

3. "All persons residing within the service area of a public utility are entitled by legal right to service upon application therefor, without discrimination, to the reasonable extent of the utility's facilities, providing that extension of such new service will not unduly prejudice the rights of existing consumers to continued service." *Williams* vs. *Utica Mining Co.*, 31 C. R. C. 602, 608.

II. EXTENSIONS

1. All public utility water systems are required to make extensions of service to each and every bona fide applicant therefor within their dedicated areas, upon compliance by such applicant with the terms and conditions of reasonable rules and regulations which have been accepted for filing or established by the Commission. *Fontana Domestic W. Co.*, 31 C. R. C. 117, 121.

2. "* * * transmission lines laid for the purpose of supplying subdivisions are not properly considered as extensions in so far as individual application for service therefrom is concerned." The piping of subdivisions is an entirely different matter from the extension of mains for individual consumers. *Fontana Domestic W. Co.*, 31 C. R. C. 117, 122.

3. In all cases in connection with the extension of water service to tracts of land to be subdivided and placed upon the market by a real estate company, the subdivider should be required to pay for the full initial cost of the piping of the subdivisions. *Fontana Domestic W. Co.*, 31 C. R. C. 117, 123.

4. Deposits collected by a water utility other than those provided for in its rules and regulations should be refunded to the consumers either in cash or by way of credit on monthly bills of such consumers. *Fontana Domestic W. Co.*, 31 C. R. C. 117, 124.

5. The Commission in unwilling to authorize a rule providing for a charge to an applicant for telephone service outside of a primary rate area if it is necessary to extend a circuit more than one thousand feet in order to provide service. *No. Cal. Tel. Co.*, 31 C. R. C. 621, 622.

III. ABANDONMENT OR DISCONTINUANCE

1. "It has never been the policy of this Commission to permit street railway companies to select for operation only the income producing portions of their lines and abandon those portions which, because of their distance from the center of population or because of other reasons, are not, in themselves, self-supporting." *Cen. Cal. Traction Co.*, 31 C. R. C. 66, 69.

2. The question whether an unpaying street railway line should be abandoned should be decided not on the basis of whether or not the line pays as an individual unit, but rather on the basis of whether or not public convenience and necessity require its operation. *Cen. Cal. Traction Co.*, 31 C. R. C. 66, 69.

3. The fact that a street railway has chosen to divest itself by lease of the better paying lines, retaining an unremunerative portion of the system, is no adequate reason that the portion of the public who depend on the unpaying end for service should suffer by the abandonment thereof. *Cen. Cal. Traction Co.*, 31 C. R. C. 66, 69.

4. The Commission will not permit discontinuance of service to a consumer who has been receiving service for some ten years, on the ground that the use by such consumer of a ram for pumping water is wasteful. Payment should be based upon the total gross amount of water delivered. *Williams* vs. *Utica Mining Co.*, 31 C. R. C. 602, 607.

5. Authorization to abandon irrigation service was denied where applicant had burdened water properties with operating expenses of its power plant, and where the return would have been greater had not the utility deliberately discouraged the use of water for irrigation. *Hobart Estate Co.*, 31 C. R. C. 673, 678.

6. Until a utility has shown an endeavor to perform an adequate and reasonable service and to expand such service in the territory it is obligated to supply at reasonable rates, it should not be permitted to discontinue its public utility duties. *Hobart Estate Co.*, 31 C. R. C. 673, 681.

7. Authorization to abandon service was denied where the utility was receiving a return in excess of five per cent, could earn more by extending service, and where consumers had no other source of supply available at a reasonable cost. *Chichizola Estate Co.*, 31 C. R. C. 688, 689.

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IV. ACCESSORIES AND CONNECTIONS

1. A telephone utility should compensate its farmer line subscribers for their telephone property which will become nonoperative upon the establishment of a new exchange. *Pac. Tel. & Tel. Co.*, 31 C. R. C. 8, 9.

2. Upon the establishment of a new exchange a telephone utility should compensate present subscribers for any of their property which will become nonoperative. *P. T. & T. Co.*, 31 C. R. C. 271, 272.

3. The installation of meters and services at the expense of consumers is not in accordance with the Commission's general rules and regulations, which require all water utilities to install and maintain, at their own expense, the service facilities from the main to the curb of property lines. *Narbonne Ranch W. Co.*, 31 C. R. C. 548, 550.

4. A water utility was required to purchase service facilities owned by consumers and thereafter to make all new installations at its own expense. *Narbonne Ranch W. Co.*, 31 C. R. C. 548, 550.

V. CONDITIONS PRECEDENT TO SERVICE

1. Any charges made by a water utility as a condition precedent to extensions of water service, which are not set forth in its rules and regulations, are irregular and improper and should be refunded. *Fontana Domestic W. Co.*, 31 C. R. C. 117, 122.

VI. PARTICULAR UTILITIES

1. A rotation system of delivering water for irrigation purposes was recommended, provided that consumers would receive waters applied for in the quantities and at the times required. *Williams* vs. *Utica Mining Co.*, 31 C. R. C. 602, 608.

2. In accepting franchises which show that a particular line was intended to be a part of a comprehensive system of street railway transportation, a carrier obligates itself to furnish service to the community as a whole, and it is almost a universal condition that street railway companies in furnishing such community service expect to, and do, operate nonpaying ends of lines. *Cen. Cal. Traction Co.*, 31 C. R. C. 66, 69.

STATUTE OF LIMITATIONS

In reparation proceedings, *see* Reparation.

STOCKHOLDER

Should pay rate as nonstockholder, *see* Discrimination.

STREET RAILROADS

See Rates IV, 5.

TELEPHONE UTILITIES

See Rates IV, 6.

TRANSFER

See Consolidation, Merger and Sale.

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VALUATION

I. In General.
II. Ascertainment of Value or Cost.
III. Nonphysical Elements.
IV. Particular Tangibles.
V. Particular Intangibles.

I. IN GENERAL

1. *Per* Carr, *concurring*. The fact that a street railway is engaged in active and acute competition with privately owned automobiles bears upon and affects the value of its property for rate fixing purposes. *L. A. Ry. Corp.*, 31 C. R. C. 383, 386.

2. Where a water system is still in the development stage by reason of a sparsely settled area of service, the question of return and rate fixing value need not be determined in an application to establish meter rates. *Riverside Water Works*, 31 C. R. C. 682.

II. ASCERTAINMENT OF VALUE OR COST

1. Determination of fair value for rate making purposes calls for the exercise of judgment and all factors having a bearing upon the property involved will be considered, and such weight given to each as seems proper under the evidence of record. *L. A. Ry. Corp.*, 31 C. R. C. 383, 384.

2. When charges and allowances for depreciation made in a utility's books are on a straight-line basis, with the inclusion of depreciation charges on that basis, the use of a depreciated rate base would follow as a corollary. *P. E. Ry. Co.*, 31 C. R. C. 454, 458.

3. Applicant having stipulated that it would accept the Commission's Engineer's historical reproduction cost for the purpose of rate making, and this figure appearing to be reasonable and proper for a rate base, it was so considered. *Peninsular Ry. Co.*, 31 C. R. C. 527, 529.

4. A fair and reasonable rate base was arrived at from an estimate of original cost, undepreciated, with lands at present value. *Imperial Utilities Corp.*, 31 C. R. C. 539, 542.

5. An estimate of reproduction cost new which contains no figure to cover accrued depreciation, includes an appraisement for expenses which should be allocated to operation and maintenance and which approximates closely estimated original cost, more than half of the system having been installed during a period of high prices, is not of such a nature as to be usable in connection with the development of a rate base. *Imperial Utilities Corp.*, 31 C. R. C. 539, 542.

6. In final analysis the matter of a rate base and its fixation upon the basis of diverse theories and conflicting testimony is a matter of judgment. *L. A. Ry. Corp.*, 31 C. R. C. 660, 661.

7. It is not the practice to use as a rate base the amount of securities outstanding, nor the figures carried in the fixed capital accounts in a utility's books unless, in the Commission's opinion, such figures, at the time of rate fixing, represent reasonable value. *Pickwick Stages System*, 31 C. R. C. 746, 750.

III. NONPHYSICAL ELEMENTS

1. Allowance was made in a rate valuation for the fact that certain property was acquired or constructed during a period of high prices. *L. A. Ry. Corp.*, 31 C. R. C. 383, 385.

IV. PARTICULAR TANGIBLES

1. A sum alleged to be the reasonable value of the use of a dam and storage facilities, together with operating costs for a period prior to the acquisition of an actual interest in said properties, does not represent any value in existing fixed capital property and can not properly be included in a rate base. *Monterey Co. W. W.*, 31 C. R. C. 852, 855.

2. Leased equipment was placed on a parity with remaining property owned by a carrier for the purpose of determining a reasonable compensation for the use of the property devoted to public service. If classes of properties are picked out and placed in a preferred position, in that the interest on the value thereof is treated

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as an operating expense, this test will become meaningless. *P. E. Ry. Co.*, 31 C. R. C. 454, 461.

3. Any excess capacities of canals and sedimentation basins are not properly to be included in a rate base. *Imperial Utilities Corp.*, 31 C. R. C. 539, 542.

4. The cost of a diversion dam rendered nonoperative and no longer necessary in rendering service should be excluded from operative capital. *Monterey Co. W. W.*, 31 C. R. C. 852, 855.

5. The additional cost of purchasing facilities paid for by consumers should be included in the investment of a utility reasonably devoted to the public use. *Narbonne Ranch W. Co.*, 31 C. R. C. 548, 550.

6. The issuance of approximately nine months' operating expense as working capital is unwarranted. *Calif. Water Service Co.*, 31 C. R. C. 327, 334.

7. An allowance of more than one-third of the entire annual operating expenses for working capital is excessive, and but one and one-half months' average operating expenses was allowed a water utility. *Haines Canyon W. Co.*, 31 C. R. C. 445, 451.

V. PARTICULAR INTANGIBLES

1. Even if any value were to be recognized in a security issuance proceeding, for a contract providing for the delivery to a utility of a certain amount of water free of charge, it would necessarily be dependent upon the life of the contract, and should be amortized, since, at the close of such period the value of such alleged "water right" would be zero. *Calif. Water Service Co.*, 31 C. R. C. 327, 334.

2. In estimating reproduction cost of utility properties in an application to transfer and issue securities, the Commission's engineers included in their figures no allowance for intangibles, such as development expenses, water rights or going concern value. *Santa Cruz Counties Utilities*, 31 C. R. C. 32, 34.

3. In a rate proceeding a water utility is not entitled to any additional or separate value for its rights to pump water from underground sources other than those values already included in the lands as water-bearing. (*Monahan* vs. *San Jose Water Co.*, 4 C. R. C. 1101; *San Gabriel Valley W. Co.*, 8 C. R. C. 481; *City of Stockton*, 22 C. R. C. 531; *City of Marysville*, 29 C. R. C. 97.) *Haines Canyon W. Co.*, 31 C. R. C. 445, 449.

4. No part of alleged present value of claimed water rights may properly be included in a rate base when such rights as a utility may have to appropiate surface stream flow appear to be secondary to the rights of a municipality. *Haines Canyon W. Co.*, 31 C. R. C. 445, 450.

5. In a security issuance valuation upon transfer of properties, the Commission having previously approved a contract giving applicant the right to obtain a certain quantity of water free of charge, subject to the proviso that there be submitted for approval the quantity of water obligated to be delivered thereunder, when such statement has not been furnished nor no request made that an order be entered approving the amount of water which must be delivered, in absence of knowledge of that amount, the Commission refrained from recognizing an alleged water right value therefor. *Calif. Water Service Co.*, 31 C. R. C. 327, 334.

6. An abitrary and unsupported assumption that a utility's water rights and going value together are equivalent to ten per cent of the value of physical properties is insufficient evidence upon which to base an allowance for going value. *Monterey Co. W. W.*, 31 C. R. C. 852, 855.

7. Going value will not be allowed where the utility has never at any time been able to earn a full net return, being still in the development stage, and where higher rates would be prohibitive and greater than the service is reasonably worth. *Haines Canyon W. Co.*, 31 C. R. C. 445, 452.

8. Early business losses and development costs have no direct bearing on the going value of a utility property as it may exist years later. *Haines Canyon W. Co.*, 31 C. R. C. 445, 452.

9. Upon the granting of a certificate applicant was placed upon notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. *S. P. Motor Transport Co.*, 31 C. R. C. 83, 85.

10. Operative rights should not be capitalized nor used as an element of value in rate proceedings. *Pickwick Stages System*, 31 C. R. C. 356, 360.

11. A water supply of poor quality, unsuitable for domestic purposes without treatment, and neither useful nor necessary, is not a proper item to be included in a rate base. *Haines Canyon W. Co.*, 31 C. R. C. 445, 450.

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VESSELS

1. Certificates authorizing operation of vessels between specified points and points directly intermediate should be given a reasonably liberal interpretation, but can not be construed to authorize operation to a point requiring a distinct and material departure from a usually traversed channel. (*Sperry Flour Co.* vs. *Island Transportation Co.*, 30 C. R. C. 561, 563.) *Cal. Transp. Co.* vs. *Ayres-Whiteside T. Co.*, 31 C. R. C. 562, 563.

2. Assuming contracts or the transportation of persons or property by vessel to be purely private in nature, when a carrier holds itself out as a common carrier between the same points, such contracts can not be lawfully exercised, as unjust discrimination would result against persons using the service as common carrier patrons and in favor of persons using the service as private contract holders. (*Washington ex rel. Stimson Lumber Co.* vs. *Kuykendall*, U. S. 72 L. ed. _____.) *Coggeshall* vs. *Cousins*, 31 C. R. C. 657, 659.

3. Should a common carrier, after authorization to cancel tariffs, continue to operate as a common carrier without securing authorization from the Commission, it is within the Commission's power to determine that such operations are public in nature and to order a cessation unless and until authorization is secured. *Coggeshall* vs. *Cousins*, 31 C. R. C. 657, 659.

WORDS AND PHRASES

"Consolidated Package"

A mere grouping of a quantity of packages in a trailer does not constitute a consolidated package so as to entitle the parcels to a bulk or consolidated package rate. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 237.

"Joint Rates"

A joint rate is one applicable to shipments from a point located on the line of one carrier to a point on the line of another, made by agreement between the carriers and published in a single tariff under proper concurrence of all lines over which the rates apply. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 233.

"Proportional Rate"

By proportional rates is meant those which differ from the corresponding local rates and which apply only to traffic destined to or brought from a point on the lines of a connecting carrier. When connecting carriers fail to make arrangements for joint rates, it has been the practice for one carrier alone to publish so-called proportional rates. *Motor Service Express* vs. *Baker*, 31 C. R. C. 231, 233.

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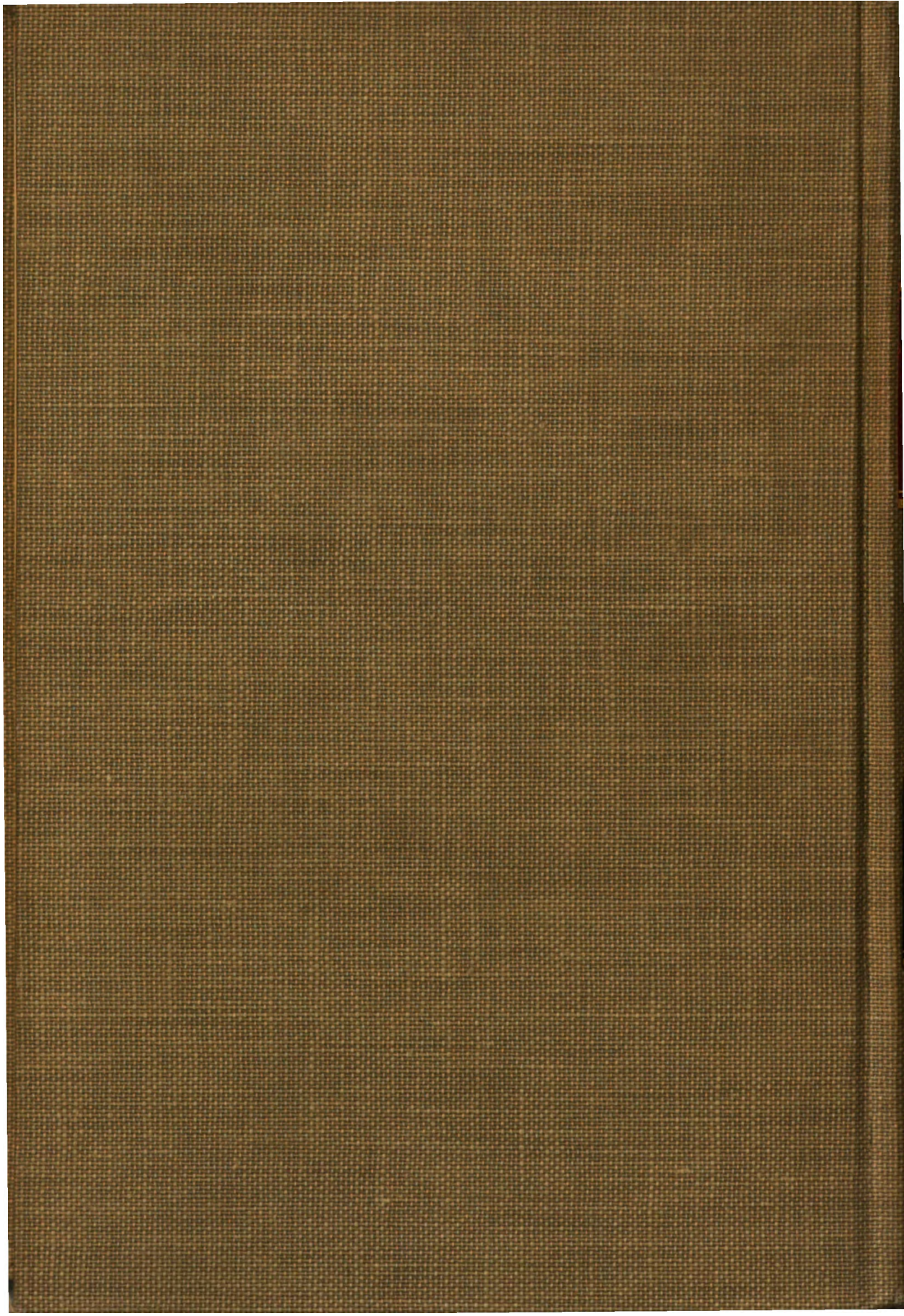

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